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NO. 9916

United States

**Circuit Court of Appeals**

For the Ninth Circuit.

Vol  
2286

WILLIAM JACKSON SHAW,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

**Transcript of Record**

In Two Volumes

**VOLUME I**

Pages 1 to 384

Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.

FILED

MAY 23 1942



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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No. 14200-Y

Viol.: Section 5(a)(2), Securities Act of 1933, as amended (Title 15, United States Code, Section 77q(a)(2)), Section 37, Criminal Code (Title 18, United States Code, Section 88), Section 215, Criminal Code (Title 18, United States Code, Section 338)

In the District Court of the United States in and for the Southern District of California, Central Division.

At a stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California on the second Monday of September in the year of our Lord one thousand nine hundred and thirty-nine;

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oath present:

(1) That a stockholders' committee, hereinafter referred to as "The Monolith Committee," was formed in 1932 to represent stockholders of the Monolith Portland Cement Company, a Nevada corporation, and the Monolith Portland Midwest Company, a Nevada corporation; that W. J. Morgan was chairman of the committee and William Jackson Shaw was investigator for and executive sec-



retary of the committee; that said William Jackson Shaw at all times controlled and dominated said committee; that the committee instituted a vigorous and persistent campaign soliciting the stockholders of the two cement companies to deposit their securities with the committee; that in reliance on said solicitations and having great trust and confidence in the committee over 1,500 stockholders of these two companies deposited their preferred and common stock of said companies with said committee;

[2]

(2) That the Monolith committee instituted stockholders' suits to recover in excess of \$2,000,000.00 alleged to be due said corporations; that as a result of litigation carried on by the committee, a judgment was entered prior to January 1, 1934, in favor of the Monolith Portland Cement Company in the amount of approximately \$820,000.00, later settled for \$225,000.00 paid to the corporation; that during the course of said litigation the stock of said corporation, which had been deposited with the committee, appreciated in value and the depositors with said committee continued to have great trust and confidence in said committee;

(3) The grand jurors aforesaid, upon their oaths aforesaid, further present and find that theretofore, to-wit: during the period of time commencing on or about the 12th day of December, 1933, and continuously thereafter to and including the dates of the uses of the mails as hereinafter set out, and subse-

quent thereto William Jackson Shaw, also known as W. J. Shaw, and Frank S. Tyler, the more full and true names of each of whom are to the grand jurors unknown, hereinafter in the several counts of this indictment sometimes called "defendants," before and at the several times of using the United States mails as hereinafter set forth, did devise and intend to devise a scheme and artifice to defraud the depositors with said committee and other persons to the grand jurors unknown and to obtain money and property by means of false and fraudulent pretenses, representations and promises from Thomas J. Allen, John W. Cline, John Wesley Cline, Jr., William L. Craig, Mrs. Mary M. D. Craig, F. D. Dodson, Mrs. Clara [3] O. Dodson, Laura I. P. Franklin, August E. Gardner, Lillian B. Gardner, Mrs. H. H. Kassow, William D. La Duke, Mrs. Adele Riche, Alberta E. Stearns, Margaret Gaud, William Schumacher, Mrs. Julia Schumacher, Patrick F. Murphy, Garfield Voget, Clayton H. Hayes, Mrs. Grace Hayes, Mrs. Frieda H. Seeger, Erna Seeger and James Kruse, and divers other persons whose names, because of their great number and want of information on the part of the grand jurors, are not stated herein, but comprising depositors with said committee and others to whom interests in the gold mining venture hereafter described should be offered, hereinafter and in the several counts of this indictment sometimes called "the persons intended to be defrauded";

(4) It was further a part of said scheme and artifice that the defendants, by the false and fraudulent representations and pretenses hereafter described, would persuade and induce the depositors with the *Monolith* committee, prior to the dissolution of the committee and the return of the deposited stock which had so appreciated in value to the said depositors, to transfer to the defendants the said stock deposited with the said committee in exchange for interests in and stock in a gold mining venture promoted by the defendants and would further induce by means of the said false and fraudulent representations and pretenses, the said depositors and other persons intended to be defrauded to exchange their money and property for interests and stock in the said gold mining venture;

(5) It was further a part of said scheme and artifice that the said defendants would employ and cause to be employed the trust and confidence existing between the *Monolith* committee and the said depositors to persuade and induce the said persons intended to be defrauded, and especially those who were depositors [4] with the *Monolith* committee, to switch and exchange their money and property for interests and stock in said gold mining venture hereafter described, for the purpose and with the intent on the part of the said defendants, among other things, of concealing from the persons intended to be defrauded that the defendants would obtain for the defendants' own use

a large part of the money and property obtained from them of a value of more than \$75,000.00 by employing and causing to be employed the name and favorable reputation of the Monolith committee to endorse exchange by the said depositors of their cement company stock for interests and stock in the said gold mining venture, by inducing the chairman of the Monolith committee, W. J. Morgan, to become vice-president, and Henry L. Wikoff, who was then and there a member of the executive committee of the Monolith committee, to become president of Consolidated Mines of California, the corporation under whose name the gold mining venture was later conducted, and by inducing the said Morgan to write letters and permit letters to be sent over his name to the persons intended to be defrauded, which letters encouraged the depositors to make said exchange, and by employing the soliciting agents and mailing facilities of the Monolith committee to communicate to the depositors the advice that the said committee approved and encouraged the said depositors to exchange their money and property for interests and stock in the said gold mining venture;

(6) The grand jurors aforesaid, upon their oaths aforesaid, further present and show that it was a part of the said scheme and artifice: that the said defendants would at all times conceal from the said persons intended to be defrauded that William Jackson Shaw controlled the Monolith committee and would at all times further conceal from the

said persons that [5] William Jackson Shaw controlled the gold mining venture, hereafter described; that said concealment should be effected by the following means, among others: that said mining venture should not be conducted in the name of said Shaw, but should be conducted first under the name of Frank S. Tyler, and later under the name of Consolidated Mines of California, a California corporation; that it should appear that the mining venture was promoted and controlled by said Monolith committee and that said Shaw and Tyler would employ various nominees and agents to act for and on behalf of the said Shaw for the purpose and with the intent on the part of the said defendants of retaining the confidence of the said persons intended to be defrauded and with the intent on the part of the said defendants of inducing the persons intended to be defrauded to exchange their money and property for interests in the said gold mining venture;

(7) It was further a part of said scheme that Shaw and Tyler should make a secret agreement between themselves for the division between themselves of the money and property which they should obtain from the persons intended to be defrauded and that pursuant thereto Tyler should pay to Shaw most of the money and property which Tyler received from the persons to be defrauded;

(8) It was further a part of said scheme and artifice that the defendants would obtain, without

cost to themselves and in the name of Frank S. Tyler, an option to purchase for \$8,000.00, payable in installments and with no down payment, three old and partially abandoned mining claims situated in Calaveras County, California, known as the Pay Day, Tunnel Site and West Extension, Mine, which, together with an old five stamp mill thereon, were known as the McKisson property; that the defendants would thereafter cause said option to be exercised, [6] and said McKisson property to be acquired for \$8,000.00, with moneys obtained by the defendants from the persons intended to be defrauded; that the defendants should use the McKisson property as the principal property used as a basis for inducing the persons intended to be defrauded to pay their money and property to defendants although the Grand Prize and Mineral Lode properties, on which defendants had also obtained options without cost, which options were never exercised, were also used by the defendants to cause the persons intended to be defrauded to part with their money and property;

(9) The grand jurors aforesaid, upon their oaths aforesaid, further present and find that it was a part of the said scheme and artifice; that the said defendants would obtain, without cost to the defendants and in the name of Frank S. Tyler options which defendants did not then and there intend to exercise, to purchase for \$14,000.00 an idle and partially developed mining property situated in the

County of Calaveras, State of California, consisting of the Grand Prize mining claim and the Grand Prize Extension Mine claim (formerly known as the Gold Bar Mine), hereinafter in the several counts of this indictment sometimes called the "Grand Prize property," together with an idle and partially developed property located in the County of Calaveras, State of California, consisting of the Ora Plater claims and Mineral Lode claims, hereinafter in the several counts of this indictment sometimes called the "Mineral Lode property;"

(10) It was further a part of said scheme and artifice that the said defendants would cause to be prepared a certain agreement designated as the Frank S. Tyler partnership agreement and cause to be proposed by the said agreement that, among other [7] things, a mining partnership was to be formed, and Frank S. Tyler was to convey to or hold in trust for the said partnership options to purchase the mining properties known as the McKisson, Grand Prize, and Mineral Lode.

(11) It was further a part of said scheme and artifice that the defendants would cause to be incorporated under the laws of the State of California a corporation known as Consolidated Mines of California, with its principal places of business at Calaveras County, Los Angeles, and Santa Monica, California, with Henry L. Wikoff, W. J. Morgan and Frank S. Tyler as its officers, and that the defendants would further cause the corporation to take

over the interests held by Tyler in the mining properties previously mentioned, and the defendants would cause the stock of the said corporation, which defendants then and there knew to have little or no value, to be delivered to the persons intended to be defrauded in exchange for their money and property;

(12) It was further a part of said scheme and artifice that the defendants would cause some mining operations to be conducted on the McKisson property; that from the ore mined during several months the defendants should cause to be sorted the ore of value until at last a single carload of valuable ore would be obtained, at a cost exceeding the value of the ore; that they would cause this carload of selected ore to be sent to a smelter and would cause numerous copies of the smelter return from this ore to be prepared and distributed to the persons intended to be defrauded as representative of the average ore in the mine without disclosing that said ore was selected ore, or disclosing that the returns from said ore were much less than the cost of obtaining said sorted ore; that the defendants would likewise cause other mining operations to be conducted at a loss [8] on the McKisson property for the purpose of giving color to the representations, hereafter described, which the defendants were causing to be made concerning said properties and for the purpose of deceiving the persons intended to be defrauded into believing that bona fide profit-



able mining operations were being conducted and causing them to pay and exchange their money and properties to defendants for stock of Consolidated Mines of California, or interests in the Tyler partnership agreement;

(13) It was further a part of said scheme and artifice that the said defendants in devising and executing the said scheme and artifice, would maintain offices of the Monolith committee and Consolidated Mines of California in the cities of Los Angeles and Santa Monica, California; would cause to be employed stenographers, bookkeepers, solicitors and salesmen; would prepare and cause to be prepared numerous typewritten, multigraphed, and duplicated letters soliciting the purchase of interests and stock, describing and commenting upon the alleged values of gold bearing ore in the properties above mentioned; would cause said letters to be disseminated to the public generally and especially to the said persons intended to be defrauded; and would conduct and cause to be conducted an extensive and persistent campaign urging the purchase of subscriptions to the Frank S. Tyler partnership agreement, and of the stock of the Consolidated Mines of California;

(14) It was further a part of the said scheme that the defendants would maintain brokerage accounts in their own and in other names with various Los Angeles brokers and cause the stock of the

Monolith Portland Cement Company, the Monolith Portland Midwest Company, and the certificates of deposits for the said securities theretofore delivered to the defendants by the said [9] investors to be sold and liquidated and the proceeds therefrom paid to defendants;

(15) It was further a part of said scheme and artifice that the defendants would at all times conceal from the persons intended to be defrauded the true condition of the mining properties, the results of operations on the properties and the financial condition of the enterprise and that the corporation would have no meetings of stockholders, annual or otherwise, that the corporation would send its stockholders no annual or other reports, balance sheets, profit and loss statements or other financial statements showing the condition of the corporation, the properties, the results of operations or the large amounts of moneys taken by the defendants for their own use, and it was further a part of said scheme and artifice that said defendants should send through the United States mails to the persons intended to be defrauded numerous letters which should promise financial statements at later dates, which promises were made without any intention of keeping them, should state the mining venture was progressing well and favorably and should lull the persons intended to be defrauded into believing that the mining venture was progressing satisfactorily, thereby enabling defendants to sell them more stock

and get more money and property for themselves, and also preventing the persons intended to be defrauded from discovering the true status of the mining venture, the moneys taken by defendants and thereby preventing the persons intended to be defrauded from taking action to protect their rights;

(16) The grand jurors aforesaid, upon their oaths aforesaid, further present and find that it was a part of the said scheme and artifice aforesaid, that the said defendants would by numerous false and fraudulent pretenses, representations, [10] and promises, by means of typewritten, multigraphed, and duplicated letters and by oral solicitations, persuade, induce, and entice the said investors to subscribe to the Frank S. Tyler partnership agreement and to purchase the capital stock of Consolidated Mines of California, and to pay and exchange to defendants their money and property which defendants would convert to their own use, which said false and fraudulent pretenses, representations, and promises were to be and were substantially as follows, to-wit:

(a) That members of the stockholders protective committee of the Monolith companies would manage, control and direct the operations at the mining properties, when in truth and in fact, as the defendants and each of them then and there well knew, members of the stockholders protective committee of the Monolith companies would not manage, control or direct operations at the mining properties, but,

on the contrary, William Jackson Shaw would manage, control and direct such operations as were carried on at the mining properties;

(b) That W. J. Morgan, the chairman of the Monolith committee, had transferred, traded and switched his investment in the securities of the Monolith Portland Cement Company to an interest and investment in the Tyler agreement or to stock in Consolidated Mines of California, when in truth and in fact, as the defendants and each of them then and there well knew, the said W. J. Morgan had not transferred, traded or switched his investment in the securities of the Monolith Portland Cement Company to an interest or investment in the Frank S. Tyler partnership agreement or stock of Consolidated Mines of California, but, on the contrary, W. J. Morgan had no interest or investment in said mining properties, or the Frank S. Tyler partnership agreement or in the stock of Consolidated Mines of California; [11]

(c) That Frank S. Tyler was an engineer, meaning thereby and intending the persons intended to be defrauded to believe that Frank S. Tyler was a mining engineer, when in truth and in fact, as the defendants and each of them then and there well knew, Tyler was not a mining engineer, but on the contrary, Frank S. Tyler was a civil engineer;

(d) That Frank S. Tyler was an experienced mining man, when in truth and in fact, as the defendants and each of them then and there well

knew, Frank S. Taylor was not an experienced mining man, but on the contrary, Frank S. Tyler had no previous mining experience;

(e) That the offer of the privilege and opportunity to subscribe to and participate in this gold mining venture was limited, restricted and only available to shareholders of the Monolith Portland Cement Company and the Monolith Portland Midwest Company, when in truth and in fact, as the defendants and each of them then and there well knew, the said offer was not limited, restricted or only available to the said shareholders, but on the contrary, the said offer was made to persons who had never owned securities of either company at any time;

(f) That the securities and cash contributed by purchasers of interests and stock in this mining venture would be used to pay the expenses of mining said properties, meaning thereby and intending that the persons to be defrauded should believe that all of the money and property provided by them would be devoted to financing development and operations costs of the mining venture on said properties, when in truth and in fact, as the defendants and each of them then and there well knew, all of the money and property so provided would not be devoted to financing development or operations costs of the mining venture, but, on the contrary, a large portion, namely, in excess of \$75,000.00 of the securities [12] and cash contributed by persons intended to be

defrauded was, without the knowledge of the persons intended to be defrauded, intended to be and was diverted to the personal use of the defendants;

(g) That the funds and proceeds derived from the sale and liquidation of the securities of the Monolith Portland Midwest Company paid defendants by the purchasers of interests and stock in this mining venture would be used to erect a mill, when in truth and in fact, as the defendants and each of them then and there well knew, the funds and proceeds derived from the sale and liquidation of the securities of the Monolith Portland Midwest Company would not and were not and were not intended to be used to erect a mill, but, on the contrary, a five stamp mill had theretofore been erected and was being operated on the McKisson property and the defendants then and there intended to convert all of said funds to their own use;

(h) That Consolidated Mines of California had no debts, when in truth and in fact as the defendants and each of them then and there well knew, the said corporation did have debts, and as they well knew, Consolidated Mines of California owed the entire purchase price on its mining properties and was also liable to Shaw and Tyler for nearly all the sums expended on the properties for mining and development, said sums having been "loaned" by Shaw and Tyler to the corporation out of the moneys which Shaw and Tyler had obtained from the persons who were intended to be defrauded;

(i) That there were large amounts of rich ore established as present in the McKisson property, meaning thereby, and intending the persons intended to be defrauded to believe that large quantities of gold bearing ore which could be extracted [13] and milled at a large profit to investors had been established as being present in the McKisson property, when in truth and in fact, as the defendants and each of them then and there well knew, neither large amounts of rich ore nor large or any quantities of ore which could be extracted or milled at a large or any profit to investors had been established as being present in the said property, and in fact such mining operations as were carried on were carried on at a loss, as said defendants and each of them well knew;

(j) That there were established as present in the McKisson property shoots and lenses of valuable ore ranging in length from 30 to 300 feet, meaning thereby and intending the persons intended to be defrauded to believe that there were established as present in the McKisson property numerous shoots and lenses of ore which could be mined and milled at a profit, when in truth and in fact, as the defendants and each of them then and there well knew, there were not established as present in the McKisson property either shoots or lenses of valuable ore ranging in length from 30 to 300 feet or numerous shoots or lenses of ore which could be mined and milled at a profit, but, on the contrary, as the de-

fendants and each of them well knew, but did not disclose to the persons intended to be defrauded, the shoots and lenses present ranged from 14 to 20 inches in width and could not be and were not extracted without a material dilution by the intermingling of the surrounding waste rock, that such shoots and lenses, therefore, did not contain valuable ore, and mining operations were always carried on at a loss, as said defendants and each of them then and there well knew;

(k) That the general dump samples of the McKisson property gave values of \$25.90 per ton, meaning thereby and [14] intending the persons intended to be defrauded to believe that an average of samples taken from the general ore dump assayed at \$25.90, when in truth and in fact, as the defendants and each of them then and there well knew, neither the general dump sample of the McKisson property nor an average of samples taken from the general ore dump would or did assay at \$25.90 per ton or any sum of commercial value, but, on the contrary, the \$25.90 value referred to resulted from an assay of a single sample taken from a small dump of selected ore and was not taken from the general dump;

(1) That a shipment of 33 tons of ore from the McKisson mine to a smelter had proved to have a gross value of \$37.26 per ton, meaning thereby that \$37.26 per ton was representative of the values of ore in the McKisson mine which would be available



for milling, when in truth and in fact, as the defendants and each of them then and there well knew, but did not disclose to the persons intended to be defrauded, \$37.26 per ton was not representative of the value of ore which would be available in the McKisson mine for milling, but, on the contrary, \$37.26 per ton represented the results of careful and expensive handsorting of better grade vein matter from inferior vein matter and waste rock, and said shipment operation was carried on at a loss;

(m) That the officers of Consolidated Mines of California were receiving no salaries and would receive none until the properties got on a paying basis, meaning thereby and intending the persons intended to be defrauded to believe that the persons who controlled and directed the affairs of Consolidated Mines of California were receiving no compensation or remuneration out of their relationship with the said corporation and would receive none until the properties were on a paying [15] basis, when in truth and in fact, as the defendants and each of them then and there well knew, but did not disclose to the persons intended to be defrauded, the said defendants who controlled and directed the affairs of the said corporation intended to receive and did receive large amounts of money in excess of \$75,000.00, for their personal use from the money and property paid by the persons intended to be defrauded, and said properties never got on a paying basis;

(n) That the operations at the mining properties were being carried on satisfactorily, when in truth and in fact, as the defendants and each of them then and there well knew, the operations at the said properties were not being carried on satisfactorily, but, on the contrary, the operations were resulting in large losses;

(o) That the subscribers to the Frank S. Tyler partnership agreement would receive dividends soon, when in truth and in fact, as the defendants and each of them then and there well knew, the subscribers to the Frank S. Tyler partnership agreement would not receive dividends soon, or at all, but, on the contrary, as the defendants and each of them then and there well knew, but did not disclose to the persons intended to be defrauded, the ore which had been or could be extracted from said properties was of insufficient quantity and value to be milled at a profit, there were no net earnings available from which dividends could be paid, the concern had no working capital, was heavily in debt, the mine was not developed, there was no profitable ore blocked out or mined, and mining operations were at all times being carried on at a loss;

(p) That the stockholders of Consolidated Mines of California would be paid dividends within a few months, when in [16] truth and in fact, as the defendants and each of them then and there well knew, the Stockholders of Consolidated Mines of California would not be paid dividends within a

few months or at all, but on the contrary, as the defendants and each of them then and there well knew, but did not disclose to the persons intended to be defrauded, the ore which had been or could be extracted from said properties was of insufficient quantity and value to be milled at a profit, there were no net earnings available from which dividends could be paid, the concern had no working capital and was heavily in debt, the mine was not developed, there was no profitable ore blocked out or mined, and mining operations were at all times being carried on at a loss;

(q) That the owners of the securities of the Monolith Portland Cement Company and the Monolith Portland Midwest Company would get back all of the funds originally invested by them in the said securities by exchanging the said securities for the capital stock of Consolidated Mines of California, when in truth and in fact, as the defendants and each of them then and there well knew, the owners of the securities of the Monolith Portland Cement Company and the Monolith Portland Midwest Company would not get back all or any of the funds originally invested by them in the said securities by exchanging said securities for the capital stock of Consolidated Mines of California, but, as the defendants and each of them then and there well knew but did not disclose to the persons intended to be defrauded, on the contrary, the capital stock of Consolidated Mines of California did not and would not have any value;

(1) That the owners of the securities of the Monolith Portland Cement Company and the Monolith Portland Midwest Company would recover the original investment made by them in the said [17] securities out of dividends received by them from Consolidated Mines of California; when in truth and in fact, as the defendants and each of them then and there well knew, the owners of the securities of the Monolith Portland Cement Company and the Monolith Portland Midwest Company would not recover the original investment made by them in the said securities or any of said investment, out of dividends received by them from Consolidated Mines of California, but on the contrary, as the defendants and each of them then and there well knew, but did not disclose to the persons intended to be defrauded, the capital stock of Consolidated Mines of California would not pay any dividends, the ore which had been or could be extracted from said properties was of insufficient quantity and value to be milled at a profit, there were no net earnings available from which dividends could be paid, the concern had no working capital and was heavily in debt, the mine was not developed, there was no profitable ore blocked out or mined, and mining operations were at all times being carried on at a loss;

(s) That the reason for offering a gold mining investment to the depositors with the Monolith Committee in exchange for their stock of the Monolith Portland Cement Company and the Monolith Port-

land Midwest Company was to enable the said investors to recover the money originally invested by them in the said stock, when in truth and in fact, as the defendants and each of them then and there well knew, the reason for offering the gold mining investment to the said investors in exchange for their said stock was not to enable the said investors to recover the money originally invested by them in the said stock, but on the contrary, as the defendants and each of them then and there well knew, the reason for the said offer was to enable the [18] defendants to obtain for their own use from the persons intended to be defrauded property and money of a value in excess of \$75,000.00, without giving to the persons intended to be defrauded property or money of an equivalent value or of any value whatever.

That all of the foregoing pretenses, representations and promises, when so made and caused to be made to the said persons intended to be defrauded by the said defendants, as the defendants and each of them then and there well knew, would be and were intended to be false and fraudulent, and were made with the intent to cheat and defraud the persons intended to be defrauded.

(17) The grand jurors aforesaid, upon their oath aforesaid, do further present and find that the said defendants William Jackson Shaw, also known as W. J. Shaw, and Frank S. Tyler, on or about the 30th day of March, 1937, at Los Angeles, County of Los Angeles, state, division and district afore-

said, and within the jurisdiction of the United States and of this Honorable Court, for the purpose of executing said scheme and artifice unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office there, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Garfield Voget at Hubbard, Oregon, to-wit: a letter of the following tenor: [19]

H. L. Wikoff

President

W. J. Morgan

Executive Vice President

Frank S. Tyler

Secretary Treasurer

CONSOLIDATED MINES OF  
CALIFORNIA

634 South Spring Street

Telephone TRinity 9606

Los Angeles, California

March 30, 1937

Mr. Garfield Voget,  
Hubbard, Oregon.

Dear Mr. Voget:

The delay in answering your letter is due to the fact that the Company is getting out an annual report which will give you full informa-

tion. This should be available in the near future; but in the meantime we want to assure you that the progress made to date is very satisfactory.

Very truly yours,

CONSOLIDATED MINES OF  
CALIFORNIA,

By FRANK S. TYLER,  
Secretary.

FST:S [20]

(Envelope—postmarked Los Angeles,  
Mar. 31, 1937)

(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mr. Garfield,  
Hubbard, Oregon. [21]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [22]

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations

of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 1, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Santa Monica, California, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Miss Laura I. P. Franklin, P. O. Box 254, Victorville, California, to-wit: a letter of the following tenor:

[23]

CONSOLIDATED MINES OF CALIFORNIA

Bay Cities Building

Santa Monica, Calif.

Telephone 20958

July 1, 1937

Miss Laura I. P. Franklin,  
P.O. Box 254,  
Victorville, California.

Dear Miss Franklin:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.



Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has been put in charge of operations at the mine.

Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is paying satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Mokelumne Hill, California; but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,  
FRANK S. TYLER,  
Secretary

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [25]

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 3, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Santa Monica, California, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mr. John W. and John Wesley Cline, R. 1, Box 515, San Jose, California, to-wit: a letter of the following tenor: [26]

CONSOLIDATED MINES OF CALIFORNIA

Bay Cities Building

Santa Monica, Calif.

Telephone 20958

July 1, 1937

Mr. John W. and John Wesley Cline,  
R 1, Box 515,  
San Jose, California.

Dear Mr. Cline:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has been put in charge of operations at the mine.

Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is paying satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Mokelumne Hill, California, but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,  
FRANK S. TYLER,  
Secretary

FST:S [27]

(Envelope—postmarked Santa Monica, Calif.,  
Jul. 3, 1937)

(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mr. John W. and John Wesley  
Cline,  
R. 1, Box 515,  
San Jose, California. [28]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [29]

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about April 9, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Los Angeles, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mrs. C. E. Seeger at 3161 College Avenue, Berkeley, California, to-wit: a letter of the following tenor: [30]

H. L. Wikoff  
President

W. J. Morgan  
Executive Vice President

Frank S. Tyler  
Secretary-Treasurer

CONSOLIDATED MINES OF  
CALIFORNIA

634 South Spring Street  
Telephone TRinity 9606  
Los Angeles, California

April 9, 1937.

Mrs. C. E. Seeger,  
3161 College Avenue,  
Berkeley, California.

Dear Mrs. Seeger:

Answering your letter of April 8th, this is to advise you that the Company is getting out an annual report which will give you full information. This should be available in the near future; but in the meantime we want to assure you that the progress made to date is very satisfactory.

Very truly yours,

CONSOLIDATED MINES OF  
CALIFORNIA,

By FRANK S. TYLER,

Secretary

FST:S [31]

S.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [31A]

Fifth Count.

And the grand jurors aforesaid, do further present, on their oath aforesaid:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 7, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Santa Monica, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mr. William and Julia A. Schumacher, 2015 William Street, Eugene, Oregon, to-wit: a letter of the following tenor: [32]

CONSOLIDATED MINES OF  
CALIFORNIA

Bay Cities Building

Santa Monica, Calif.

Telephone 20958

July 1, 1937

Mr. William and Julia A. Schumacher,  
2015 William Street,  
Eugene, Oregon.

Dear Mr. and Mrs. Schumacher:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has been put in charge of operations at the mine.

Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is paying



satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Moke-lumne Hill, California; but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,  
FRANK S. TYLER,  
Secretary

FST:S [33]

(Envelope—postmarked Santa Monica, Calif.,  
Jul. 7, 1937)

(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mr. William and Julia A. Schu-  
macher,  
2015 William Street,  
Eugene, Oregon. [34]

Contrary to the form of the statute in such case made and provided and against the peace and dig-nity of the United States of America. [35]

## Sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 7, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Santa Monica, County of Los Angeles, state, division and district aforesaid, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mr. Augustus E. and Lillian B. Gardner at 318 1st St., South, Forest Grove, Oregon, to-wit: a letter of the following tenor: [36]

CONSOLIDATED MINES OF  
CALIFORNIA

Bay Cities Building  
Santa Monica, Calif.  
Telephone 20958

July 1, 1937

Mr. Augustus E. and Lillian B. Gardner,  
318 1st St., South,  
Forest Grove, Oregon.

Dear Mr. and Mrs. Gardner:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has been put in charge of operations at the mine.

Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is paying

satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Mokelumne Hill, California; but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,

FRANK S. TYLER,

Frank S. Tyler, Secretary

FST:S [37]

(Envelope—postmarked Santa Monica, Calif.,  
Jul. 7, 1937)

(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mr. Augustus N. and Lillian  
B. Gardner,  
318 1st St., South,  
Forest Grove, Oregon. [38]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [39]

## Seventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about April 1, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Los Angeles, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mrs. Grace Hayes at Rt. 1, Box 270, Fresno, California, to-

wit: a letter of the following tenor: [40]

H. L. Wikoff

President

W. J. Morgan

Executive Vice President

Frank S. Tyler

Secretary-Treasurer

CONSOLIDATED MINES OF  
CALIFORNIA

634 South Spring Street

Telephone TRinity 9606

Los Angeles, California

April 1, 1937

Mrs. Grace Hayes,

Rt. 1, Box 270,

Fresno, California.

Dear Mrs. Hayes:

Answering your letter of March 31, 1937, the Company is preparing an annual report which will give you full information. This should be available in the near future; but in the meantime we want to assure you that the progress made to date is very satisfactory.

Very truly yours,

CONSOLIDATED MINES OF  
CALIFORNIA

By FRANK S. TYLER,

Frank S. Tyler, Secretary

(Envelope—postmarked Los Angeles, Apr. 1,  
1937)

(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mrs. Grace Hayes,  
Rt. 1, Box 270,  
Fresno, California. [42]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [43]

Eighth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about September 9, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowing-

ly place and cause to be placed in the United States Post Office at Santa Monica, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mr. Patrick F. Murphy at 233 North 3d St. San Jose California, to-wit: a letter of the following tenor:

[44]

CONSOLIDATED MINES OF  
CALIFORNIA

Bay Cities Building  
Santa Monica, California  
Telephone 20958

September 1, 1937.

Mr. Patrick F. Murphy  
233 North Third St.  
San Jose, California.

Dear Mr. Murphy:

Under date of July 1, you were advised of certain changes made in the policy and personnel of your company. Since that time the progress made has been extremely gratifying.

Underground work has gone forward steadily, increasing the availability of ore for the mill. This work has progressed to such a stage that we are able to now announce that starting within the next ten days production will be increased to approximately 750 tons per month. We feel that this will immediately produce the



results to which we all have been looking forward.

Your President was one of the subscribers to the original Tyler Agreement, having exchanged a substantial block of Monolith Common, Preferred and Midwest Stock on the same basis as all the other original partners, as well as putting up cash, and I believe we made a wise move when we joined Mr. Frank S. Tyler in this enterprise.

You will be advised in the near future of results obtained.

Very truly yours,

CONSOLIDATED MINES OF  
CALIFORNIA

By H. L. WIKOFF,

H. L. Wikoff, President

DD [45]

(Envelope—postmarked Santa Monica, Sep. 9,  
1937)

(from)

Consolidated Mines of California

Bay Cities Building

Santa Monica, California

(to)

Mr. Patrick F. Murphy

233 North 3d St.

San Jose California [46]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [47]

Ninth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 3, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Santa Monica, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mrs. Marie M. D. Craig, at R. F. D. #1, Riverdale, California, to-wit: a letter of the following tenor: [48]

CONSOLIDATED MINES OF CALIFORNIA

Bay Cities Building

Santa Monica, Calif.

Telephone 20958

July 1, 1937

Mrs. Marie M. D. Craig,

R. F. D. #1,

Riverdale, California.

Dear Mrs. Craig:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has been put in charge of operations at the mine.

Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is pay-

ing satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Mokelumne Hill, California; but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,

FRANK S. TYLER

Frank S. Tyler, Secretary

FST:S [49]

(Envelope—postmarked Santa Monica, Jul. 3, 1937)  
(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California.

(to)

Mrs. Marie M. D. Craig,

R. F. D. #1,

Riverdale, California. [50]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [51]

## Tenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about September 8, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Santa Monica, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to F. D. and Clara Dodson at 1116½ W. 21st St. Los Angeles California, to-wit: a letter of the following tenor: [52]

## CONSOLIDATED MINES OF CALIFORNIA

Bay Cities Building  
Santa Monica, California  
Telephone 20958

September 1, 1937.

Mr. and Mrs. F. D. Dodson  
1116½ W. 21st St.  
Los Angeles California

Dear Mrs. and Mrs. Dodson:

Under date of July 1, you were advised of certain changes made in the policy and personnel of your company. Since that time the progress made has been extremely gratifying.

Underground work has gone forward steadily, increasing the availability of ore for the mill. This work has progressed to such a stage that we are able to now announce that starting within the next ten days production will be increased to approximately 750 tons per month. We feel that this will immediately produce the results to which we all have been looking forward.

Your President was one of the subscribers to the original Tyler Agreement, having exchanged a substantial block of Monolith Common, Preferred and Midwest Stock on the same basis as all the other original partners, as well as putting up cash, and I believe we made a wise move when we joined Mr. Frank S. Tyler in this enterprise.

You will be advised in the near future of results obtained.

Very truly yours,

CONSOLIDATED MINES  
OF CALIFORNIA

By H. L. WIKOFF,

H. L. Wikoff, President

DD [53]

(Envelope—postmarked Santa Monica, Sep. 8, 1937)  
(from)

Consolidated Mines of California  
Bay Cities Building  
Santa Monica, California

(to)

F. D. and Clara Dodson

1116½ W. 21st St.

Los Angeles California [54]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [55]

Eleventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 3, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and cause to be placed in the United States Post Office at Los Angeles, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mrs. Alberta E. Stearns at 329 No. Kenmore, Los Angeles, California, to-wit: a letter of the following tenor: [56]

CONSOLIDATED MINES OF CALIFORNIA

Bay Cities Building  
Santa Monica, Calif.  
Telephone 20958

July 1, 1937

Mrs. Alberta E. Stearns,  
329 North Kenmore,  
Los Angeles, California.

Dear Mrs. Stearns:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has



been put in charge of operations at the mine.

Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is paying satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Mokelumne Hill, California; but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,

FRANK S. TYLER

Frank S. Tyler, Secretary

FST:S [57]

(Envelope—postmarked Los Angeles, Jul. 3, 1937)  
(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mrs. Alberta E. Stearns,  
329 No. Kenmore,  
Los Angeles, California. [58]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [59]

#### Twelfth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about March 8, 1939, at Los Angeles, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, then having devised the scheme and artifice in said first count described, did knowingly place and cause to be placed in the United States Post Office at Los Angeles, to be sent and delivered by

the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Mr. James Kruse, 1127 Laguna Street, San Francisco, California, to-wit: a letter of the following tenor: [60]

W. J. SHAW & CO.

Investments

634 South Spring Street

Los Angeles

Trinity 9606

Established 1914

March 8, 1937

Mr. James Kruse,  
1127 Laguna Street,  
San Francisco, California.

Dear Mr. Kruse:

My reason for not answering your letter promptly is that I have been expecting to come to San Francisco every day for some time, and I thought it best to have a personal talk with you, to go over the matter, so that you might understand the whole situation.

I will be in San Francisco very soon now, and will give you a call upon my arrival.

With kindest regards,

Yours very truly,

W. J. SHAW

WJS:S [61]

(Envelope—postmarked Los Angeles, Mar. 8, 1937)  
(from)

W. J. Shaw & Co.  
Investments  
634 South Spring Street  
Los Angeles

(to)

Mr. James Kruse,  
1127 Laguna Street,  
San Francisco, California. [62]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [63]

Thirteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That they do reallege and incorporate herein, as if again set forth at length, all of the allegations of the first count of this indictment, except those allegations alleging the mailing of the letter referred to in said count and describing said letter;

That the defendants, on or about July 1, 1937, then having devised the scheme and artifice in said first count described, for the purpose of executing the same, in the Central Division of the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did knowingly place and

cause to be placed in the United States Post Office at Santa Monica, California, to be sent and delivered by the Post Office Establishment of the United States, according to the directions thereon, a certain letter in a postpaid envelope addressed to Miss Margaret Gaud, 329 N. Kenmore, Los Angeles, California, to-wit: a letter of the following tenor: [64]

CONSOLIDATED MINES OF  
CALIFORNIA

Bay Cities Building  
Santa Monica, Calif.  
Telephone 20958

July 1, 1937

Miss Margaret Gaud,  
329 N. Kenmore,  
Los Angeles, California.

Dear Miss Gaud:

Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

Mr. Colman O'Shea, who has had a wide experience in the operation of quartz mines, has been put in charge of operations at the mine.

Mr. Byron E. Roe, who has successfully operated mines in this section for over thirty years, has been made "Assistant to the President" and put in full charge of directing policy and methods of mining and development.

These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

Not one of your officers is on the payroll and they will not be, until the corporation is paying satisfactory dividends; and they are just as anxious as you are, to receive them.

We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Mokelumne Hill, California; but because it is more practical and less expensive.

In the future you will be kept fully informed as to important developments and decisions.

On behalf of the Board,

FRANK S. TYLER,

Frank S. Tyler, Secretary

FST:S [65]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [66]

#### Fourteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present and show that the de-

fendants William Jackson Shaw, also known as W. J. Shaw, and Frank S. Tyler, heretofore, on or about December 21, 1936, at Los Angeles, County of Los Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, knowingly, unlawfully, wilfully and feloniously did cause to be delivered by the United States mails a certain security, to-wit: a certificate, No. 732, for 250 shares of the capital stock of Consolidated Mines of California, a corporation, for the purpose of sale and for delivery after sale of said security to Dr. Homer J. Arnold and Florence R. Arnold, no registration statement being in effect as to such security and no exemption from registration being available, and said delivery by the United States mails was in the manner following, to-wit:

Said defendants on or about December 21, 1936, caused to be delivered by the Post Office establishment of the United States according to the directions thereon, a postpaid envelope addressed to Dr. Homer J. and Florence R. Arnold, 345 South Norton, Los Angeles, California, enclosing said security, which said security was of the following tenor, to-wit: [67]

Number 732

Shares \*\*250\*\*

Incorporated under the laws of the  
State of California

CONSOLIDATED MINES OF  
CALIFORNIA

Capital Stock 1,000,000 Shares  
No Par Value

Fully Paid, Fully Voting and Non-assessable

This Certifies that Homer J. Arnold and Florence R. Arnold, Joint Tenants, with full rights of Survivorship is the registered holder of Two Hundred Fifty Shares, being the shares represented hereby, of Consolidated Mines of California hereinafter designated "the Corporation," transferable on the share register of the corporation upon surrender of this certificate properly endorsed or assigned. By the acceptance of this certificate the holder hereof assents to and agrees to be bound by all of the provisions of the Articles of Incorporation and all amendments thereto.

Witness, the seal of the Corporation and the signatures of its duly authorized officers, this 14th day of December, A. D. 1936.

H. L. WIKOFF

President

FRANK S. TYLER

Secretary [68]



For value received.....  
 hereby sell, assign and transfer unto.....  
 ..... shares  
 of the capital stock represented by the within  
 certificate, and do hereby irrevocably constitute  
 and appoint .....  
 Attorney to transfer the said stock on the books  
 of the within named corporation with full  
 power of substitution in the premises.

Dated.....  
 .....

In presence of  
 .....

Notice: The signature to this assignment  
 must correspond with the name as written upon  
 the face of the certificate in every particular,  
 without alteration or enlargement or any change  
 whatever. [69]

Contrary to the form of the statute in such case  
 made and provided and against the peace and dig-  
 nity of the United States of America. [70]

Fifteenth Count.

And the grand jurors aforesaid, upon their oath  
 aforesaid, do further present and show that the de-  
 fendants William Jackson Shaw, also known as  
 W. J. Shaw, and Frank S. Tyler, heretofore on or  
 about June 3, 1937, at Los Angeles, County of Los

Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, wilfully, knowingly, unlawfully and feloniously did cause to be delivered by the United States mails a certain security, to wit: a certificate number 741, for 30 shares of the capital stock of Consolidated Mines of California, a corporation, for the purpose of sale and for delivery after sale of said security to Regina Woodruff, no registration statement being in effect as to such security and no exemption from registration being available, and said delivery by the United States mails was in the manner following, to wit:

Said defendants on or about June 3, 1937 caused to be delivered by the Post Office establishment of the United States according to the directions thereon, a postpaid envelope addressed to Mrs. Regina Woodruff, 802 North Vermont, Los Angeles, California, enclosing said security, which said security was of the tenor following, to-wit: [71]

Number 741

Shares 30

Incorporated under the laws of the  
State of California

CONSOLIDATED MINES OF  
CALIFORNIA

Capital Stock 1,000,000 Shares  
No Par Value

Fully Paid, Fully Voting and Non-assessable

This Certifies that Regina Woodruff is the registered holder of Thirty Shares, being the

shares represented hereby, of Consolidated Mines of California hereinafter designated "the Corporation," transferable on the share register of the corporation upon surrender of this certificate properly endorsed or assigned. By the acceptance of this certificate the holder hereof assents to and agrees to be bound by all of the provisions of the Articles of Incorporation and all amendments thereto.

Witness, the seal of the Corporation and the signatures of its duly authorized officers, this 13th day of May, A. D. 1937.

H. L. WIKOFF

President

FRANK S. TYLER

Secretary [72]

For value received.....  
hereby sell, assign and transfer unto.....  
..... shares  
of the capital stock represented by the within  
certificate, and do hereby irrevocably constitute  
and appoint .....  
Attorney to transfer the said stock on the books  
of the within named corporation with full  
power of substitution in the premises.

Dated.....

.....  
In presence of  
.....

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement or any change whatever. [73]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [74]

#### Sixteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present and show that the defendants William Jackson Shaw, also known as W. J. Shaw, and Frank S. Tyler, heretofore on or about June 8, 1937, at Los Angeles, County of Los Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, wilfully, knowingly, unlawfully and feloniously did cause to be delivered by the United States mails a certain security, to wit: a certificate, number 742, for 18 shares of the capital stock of Consolidated Mines of California, a corporation, for the purpose of sale and for delivery after sale of said security to J. C. and E. M. Goodrich, no registration statement being in effect as to such security and no exemption from registration being available, and said delivery by the United States mails was in the manner following, to wit:

Said defendants on or about June 8, 1937, caused to be delivered by the Post Office Establishment of the United States according to the directions thereon, a postpaid envelope addressed to Mr. J. C. and E. M. Goodrich, 4532 South Wilton Street, Los Angeles, California, enclosing said security, which said security was of the tenor following, to-wit:

[75]

Number 742

Shares 18

Incorporated under the laws of the  
State of California

CONSOLIDATED MINES OF  
CALIFORNIA

Capital Stock 1,000,000 Shares  
No Par Value

Fully Paid, Fully Voting and Non-assessable

This Certifies that J. C. Goodrich and E. M. Goodrich, Joint Tenants with full rights of survivorship is the registered holder of Eighteen Shares, being the shares represented hereby, of Consolidated Mines of California hereinafter designated "the Corporation," transferable on the share register of the corporation upon surrender of this certificate properly endorsed or assigned. By the acceptance of this certificate the holder hereof assents to and agrees to be bound by all of the provisions of the Articles of Incorporation and all amendments thereto.

Witness, the Seal of the Corporation and the signatures of its duly authorized officers, this 8th day of June, A. D. 1937.

H. L. WIKOFF

President

FRANG S. TYLER

Secretary [76]

For value received.....  
 hereby sell, assign and transfer unto.....  
 ..... shares  
 of the capital stock represented by the within  
 certificate, and do hereby irrevocably constitute  
 and appoint .....  
 Attorney to transfer the said stock on the books  
 of the within named corporation with full  
 power of substitution in the premises.

Dated.....  
 .....

In presence of  
 .....

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement or any change whatever. [77]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [78]

## Seventeenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present and show that the said defendants, William Jackson Shaw, also known as W. J. Shaw, and Frank S. Tyler, beginning on or about December 12, 1933, and continuously thereafter to and including September 15, 1937, in the Southern District of California, and within the jurisdiction of the United States and of this Honorable Court, unlawfully and feloniously did conspire, combine, confederate and agree together and with each other, to commit divers offenses against the United States, to wit, the divers offenses charged against said defendants in the divers counts of this indictment preceding this count, and made offenses by Section 338, Title 18, United States Code, and Section 77q (a) (2), Title 15, United States Code, the allegations concerning which are hereby incorporated by reference to such counts, and that said defendants would thereafter within the jurisdiction of this Court do divers overt acts to effect the object of said unlawful and felonious conspiracy, to wit, the several acts of placing letters, circular letters and securities in the Post Offices of the United States at Los Angeles, California, and Santa Monica, California, described in the foregoing counts of this indictment, the allegations of said counts concerning these acts being herein incorporated by reference, and numerous acts of preparing said letters, circular letters and

securities for mailing and delivery and of making the false representations, pretenses and promises set forth in the first count of this indictment, the allegations concerning the making of such false representations, pretenses and promises being hereby incorporated by reference, as well as certain other overt acts now here specified, that is to say:

(1) On or about December 14, 1936, at Los Angeles, California, defendant William Jackson Shaw did affix his signature "W. J. Shaw" to a certain letter addressed to Mr. George J. Porteous, [79] West Point, California, which letter included the following with regard to a new agreement whereby Consolidated Mines of California, a corporation, would obtain rights in and to the Grand Prize and Mineral Lode properties:

"Please have the deeds to the two properties made out in favor of Frank S. Tyler, and deposit them with the Bank of America at Jackson, California; with instructions to the bank to deliver them upon the receipt of five thousand (5000) shares of the common stock of the Consolidated Mines of California."

(2) On or about December 16, 1936, at Los Angeles, California, defendants William Jackson Shaw and Frank S. Tyler caused to be deposited in the California Bank for collection and payment a certain check dated December 14, 1936, drawn on the bank of America, by Florence R. Arnold and pay-



able to the order of W. J. Shaw in the amount of \$420.00.

(3) On or about March 8, 1937, at Los Angeles, California, defendant William Jackson Shaw did affix his signature "W. J. Shaw", to a certain letter addressed to James Kruse, which letter is set out in full in Count 12 above, and is herein incorporated by reference.

(4) On or about December 19, 1936, at Los Angeles, California, defendants William Jackson Shaw and Frank S. Tyler caused to be delivered through the United States mails a certain letter of transmittal addressed to Dr. Homer J. and Florence R. Arnold, 1345 South Norton, Los Angeles, California, which letter included the following with regard to purchase of stock of Consolidated Mines of California.

"Enclosed please find Certificate No. 732 for Two Hundred Fifty (250) shares of stock of the Consolidated Mines of California."

(5) On or about April 23, 1937, at Los Angeles, California, defendant William Jackson Shaw delivered to Mary F. Claypool, certificate No. 737 for 220 shares of the capital stock of Consolidated Mines of California.

(6) On or about May 13, 1937, at Los Angeles, California, defendants William Jackson Shaw and Frank S. Tyler caused to be issued in the names of J. C. and E. M. Goodrich, certificate No. 714 for

18 [80] shares of the capital stock of Consolidated Mines of California.

(7) On or about May 13, 1937, at Los Angeles, California, defendants William Jackson Shaw and Frank S. Tyler caused to be issued in the name of Regina Woodruff, certificate No. 741 for 30 shares of the capital stock of Consolidated Mines of California.

(8) On or about December 29, 1936, at Los Angeles, California, defendants William Jackson Shaw and Frank S. Tyler caused to be delivered to Pledger & Company, brokers, certificate No. 1035 for 28 shares of common stock of the Monolith Portland Cement Company, standing in the name of Perle Burns for the purpose of sale and remission of proceeds of such sale to the defendants, proceeds of such sale being subsequently received by defendants.

(9) On or about January 25, 1937, at Los Angeles, California, defendants William Jackson Shaw and Frank S. Tyler caused to be delivered to Pledger & Company, brokers, certificate No. 813 for 138 shares of preferred stock of the Monolith Portland Midwest Company, standing in the name of Thomas J. and Anna L. Allen for the purpose of sale and remission of proceeds of such sale to the defendants, proceeds of such sale being subsequently received by defendants.

(10) On or about April 24, 1937, at Los Angeles, California, defendants William Jackson Shaw and

Frank S. Tyler caused to be delivered to Pledger & Company, brokers, certificate No. 822 for 30 shares of preferred stock of the Monolith Portland Midwest Company, standing in the name of Mary Florence Claypool for the purpose of sale and remission of proceeds of such sale to the defendants, proceeds of such sale being subsequently received by defendants.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

BEN HARRISON,

United States Attorney,

WM. FLEET PALMER,

Assistant United States Attorney

[Endorsed]: Indictment. A true bill. A. M. Buley, Foreman. Filed Dec. 13, 1939. R. S. Zimmerman, Clerk. Bail, \$5000. [81]

In the District Court of the United States, Southern District of California, Central Division

No. 14200-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM JACKSON SHAW, also known as W.

J. SHAW, and FRANK S. TYLER,

Defendants.

PLEA IN ABATEMENT OF DEFENDANT  
WILLIAM JACKSON SHAW.

Now comes William Jackson Shaw, also known as W. J. Shaw, one of the defendants above named, hereinafter referred to as this defendant, and, as his first plea to the indictment herein, files this his personal Plea in Abatement to said indictment to the effect that he should not be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing which may be, or is, presented, set forth or alleged in said indictment, and in this respect, alleges the following facts in abatement of said indictment, towit :

I

That on or about July 17, 1936, in the city of Los Angeles, County of Los Angeles, State of California, at Room 427, Bank of America Building, 650 South Spring Street therein, the (United States)

Securities and Exchange Commission (hereinafter referred to as the or said Commission) was proceeding with a hearing and investigation under the [82] "Securities Act of 1933," begun previously to *say* day, of the affairs and conduct of Consolidated Mines of California, a corporation, which said proceeding before said Commission was entitled, "In the Matter of Consolidated Mines of California," in the records and files of said Commission, and which said corporation was and is the corporation referred to by a similar name throughout the indictment herein.

## II

That the said hearing and investigation before said Commission was at said time and place presided over and conducted by Milton V. Freeman, Examiner; that said Milton V. Freeman, Examiner, was the officer designated by said Commission to require and compel the attendance and testimony of witnesses before the said Commission and at said hearing, and said Milton V. Freeman, Examiner, was the officer designated by said Commission to require and compel the production of books, papers, contracts, agreements and other documents before the said Commission at said hearing.

## III

That prior to said July 17, 1936, this defendant was requested to attend the said hearing before said Commission by said Milton V. Freeman, Examiner;

that thereupon, and on said July 17, 1936, at the time and place aforementioned, this defendant did attend said hearing in response to the request of said Commission. [83]

#### IV

That during the course of said hearing and at the hour of two o'clock P. M., or thereabouts, of said day, at said time and place and in said proceeding mentioned, this defendant was called before said Commission by said Examiner and was sworn and testified as a witness on behalf of the Government concerning the affairs and conduct then under investigation by said Commission of said Consolidated Mines of California, a corporation; that this defendant on said day and from time to time thereafter in said proceedings proceeded to answer questions propounded to him by said Examiner.

#### V

That the testimony given by this defendant before said Commission, as a witness on behalf of the government, related briefly and in substance to the following transactions, matters and things:

(a) The formation of the Stockholders' Protective Committee of Monolith Portland Cement Company and the connection of this defendant therewith and the connection of this defendant with the Consolidated Mines of California.

(b) The connection and relation between this defendant and members of said stockholders' Protective Committee.

(c) The valuation of the shares of the Monolith Portland Cement Company stock.

(d) The details of and the participation of this [84] defendant in organizing the Consolidated Mines of California.

(e) The details and participation of this defendant in the sale of the interests in the partnership and stock of Consolidated Mines of California to members of depositors of Monolith Portland Cement Company.

(f) The details of and the participation of this defendant in interesting members of said Stockholders' Protective Committee and depositors therein in the gold mining venture referred to as Consolidated Mines of California.

(g) The preparation of letters sent out to partners or stockholders in Consolidated Mines of California.

(h) The details of and representations made to stockholders of Consolidated Mines of California.

(i) Preparation of and authorship of letters sent to stockholders of Consolidated Mines of California.

(j) Relation of and influence of this defendant upon determining policies of Consolidated Mines of California.

(k) Relation and connection of this defendant to and with Frank S. Tyler and Henry L. Wikoff and W. J. Morgan referred to in the indictment herein.

That all of the transactions, matters and things above referred to, concerning which this defendant

testified at length, as aforesaid, were and are and each of them is the transactions, matters and things which is the subject matter of the indictment in the above entitled action. [85]

## VI

That the United States Government has in its possession the testimony of this defendant at said hearing and has available to it all of the records and files of the said Commission, including the transcript of the testimony at the hearings before said Commission in connection with Consolidated Mines of California; that the testimony of this defendant covered the transactions, matters and things attempted to be alleged in this indictment as the basis of the prosecution of this defendant.

## VII

That this defendant, having been requested to appear before said Commission and having testified, as above set forth, as a witness on behalf of the Government, he thereupon became and ever since has been entitled to be not prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he was compelled to testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying; that notwithstanding the immunity of this defendant from being prosecuted or subjected to a penalty or forfeiture, as aforesaid, the indictment in the above entitled action consti-



tutes a prosecution of this defendant for or on account of the transactions, matters and things concerning which he was compelled to testify, as aforesaid. [86]

## VIII

That this defendant has exercised diligence in presenting the within Plea in Abatement to the above entitled court, the same being his first plea to the indictment on file herein, subsequent to his arraignment thereon; that this Plea in Abatement is not filed for the purpose of delay in the progress of this case, but is presented to secure the granting of the Plea and the quashing of the indictment herein against this defendant.

## IX

That the transactions, matters or things concerning which this defendant testified, as aforesaid, before said Commission, are the transactions, matters or things, the basis of each count set forth in the indictment in the above entitled action.

Wherefore, this defendant prays that this Plea in Abatement be granted; that the indictment in the above entitled action be quashed; that the indictment in the above entitled action be quashed as to this defendant; and that this defendant be discharged.

WILLIAM JACKSON SHAW

W. J. SHAW

Defendant

HAROLD C. FAULKNER

Attorney for Defendant [87]

State of California,  
County of Los Angeles—ss.

William Jackson Shaw, being first duly sworn,  
deposes and says:

That he is one of the defendants in the above  
entitled action and is the person named in the fore-  
going Plea in Abatement; that your affiant has read  
the foregoing Plea in Abatement and knows the  
contents thereof, and that the facts therein stated  
are true.

WILLIAM JACKSON SHAW  
W. J. SHAW

Subscribed and sworn to before me this 8th day  
of April, 1940.

R. S. ZIMMERMAN,  
Clerk U. S. District Court  
Southern District of  
California

By GEO. E. RUPERICH  
Deputy

Receipt of a copy of the within Plea in Abatement  
of defendant, William Jackson Shaw, is hereby ad-  
mitted this 8th day of April, 1940.

BEN HARRISON  
United States Attorney  
By WILLIAM F. HALL, Asst.  
Attorney for Plaintiff

[Endorsed]: Filed April 8, 1940. [88]

[Title of District Court and Cause.]

DEMURRER OF DEFENDANT,  
WILLIAM JACKSON SHAW

Now comes the defendant, William Jackson Shaw, in the above entitled action and without waiving his right to hereafter plead not guilty, files this, his demurrer to said indictment, and for grounds of demurrer specifies:

I.

That the First and each and every count of said indictment fails to allege facts sufficient to constitute a public offense under the laws of the United States.

II.

That the First and each and every count of the said indictment fails to inform the accused of the nature and cause of the accusation against them in ordinary and concise language with such certainty as to enable them to understand the charges and prepare their defense to each and every charge contained therein, and that the First and each and every count in said indictment is, therefore, repugnant to the [89] Sixth Amendment of the Constitution of the United States.

III

That said indictment is duplicitous, and each separate count in said indictment, except the Seventeenth count, is duplicitous in this, that each of said counts (other than the seventeenth count) attempts to

charge the defendants with more than one offense in the same count, towit: A violation of Title 15, U. S. C. Ann., Sec. 77q(a)(2), and a violation of Title 18, U. S. C. Ann., Section 338.

#### IV

That in each count in said indictment, other than the Seventeenth count, there is a misjoinder of offenses in each thereof in the same particulars in which each count is hereinabove alleged to be duplicitous.

#### V

That said indictment in duplicitous and/or there is a misjoinder of offenses in said indictment in this, that sixteen separate offenses are attempted to be alleged in violation of said Title 15, U. S. C. Ann., Sec. 77q thereof; each of which is a repetition of the same offense, if any.

#### VI

That the first and each and every count in the indictment fails to state a public offense under the laws of the United States for the reason that the letters, reports or documents alleged in each respective count in said indictment to have been placed in the United States mails could not, nor could either of them, have been for the purpose of [90] executing any scheme or artifice to defraud sought to be pleaded in the indictment.

## VII

That the said indictment as a whole is, and the First and each and every count therein are indefinite, ambiguous and unintelligible to such an extent that this defendant is not advised thereby of the nature of the charge against him so that he may properly prepare and submit his defense thereto.

## VIII

That the First count in said indictment and each and every count thereof, which includes by reference any portion of the First count in said indictment, were, and are each thereof is, general, vague, indefinite, uncertain, ambiguous and unintelligible in each and every and all of the following respects: That in said First count in said indictment and in each succeeding count, which includes any portion thereof by reference, it does not appear therein nor can it be ascertained therefrom (the paragraphs hereinafter referred to are the paragraphs numbered in the First count in said indictment):

1. How or in what manner or by what means William Jackson Shaw controlled and/or dominated the Committee referred to in paragraph One.

2. Except from the legal conclusion of the pleader that William Jackson Shaw did control and/or dominate the [91] Committee referred to in paragraph One.

3. The time when said defendant devised or intended to devise a scheme or artifice to defraud as alleged in paragraph Three.

4. Where or at what place defendant devised or intended to devise the scheme or artifice to defraud as alleged in paragraph Three.

5. What period of time is intended to be covered by the word "before" used in line 18 of paragraph Three of said indictment.

6. How or in what manner the defendant could devise or intended to devise a scheme to defraud and/or to obtain money and property by means of false and fraudulent pretenses as alleged in said paragraph Three at the time of the mailing of each letter referred to in said indictment when it appears that said scheme, if any, and said false and fraudulent pretenses, if any, all occurred at a time long prior to the mailing of the letters referred to in said indictment.

7. Where the defendant did persuade or induce the depositors with the Monolith Committee to do any of the acts and things alleged in paragraph Four of said indictment.

8. The time or place of any of the occurrences as set forth in paragraph Four.

9. The time of the dissolution of the Committee referred to in paragraph Four. [92]

10. The time and place of performance of any of the acts or things claimed to have been done or performed as alleged in paragraph Five of said indictment, and each succeeding paragraph and subdivisions of said paragraphs, in the First count in said indictment.

11. Whether the defendant employed and/or caused to be employed the trust and confidence existing between the Monolith Committee and the depositors as alleged in said paragraph Five.

12. Except from the legal conclusion of the pleader and trust and confidence existed between the Monolith Committee and the depositors as alleged in said paragraph Five or as alleged in any other paragraph in said indictment.

13. How or in what manner the defendant could employ or cause to be employed the trust and confidence of depositors with other persons.

14. How "trust and confidence" can do the act of "persuading and inducing" as alleged in said paragraph Five.

15. How or in what manner defendant induced Morgan to write letters as alleged in paragraph Five.

16. Except from the legal conclusions of the pleader that the letters of Morgan encouraged the depositors to do any of the acts or things alleged in said paragraph Five.

17. Except from the legal conclusions of the pleader that defendant Shaw controlled either the Monolith Committee or the gold mining venture referred to in paragraph Six of [93] said indictment.

18. Whether defendant Shaw and Tyler did make the secret agreement referred to in paragraph Seven to said indictment.

19. Whether defendant Tyler did pay Shaw most of the money and property which Tyler received from any person referred to in said indictment.

20. How or in what manner any act alleged in paragraph Eight of said indictment could be part of the scheme and artifice referred to in said indictment when in paragraph Sixteen therein it is alleged that the same scheme and artifice was for the defendants to convert all of the moneys and properties received by them to their own use.

21. Whether the defendants did any of the acts which it is alleged they would do in said paragraph Eight.

22. Whether the defendants did or performed any of the acts which it is alleged in paragraph Nine of said indictment they would do.

23. What time and what place is referred to by the use of the expression, "then and there," in line 25 of paragraph Nine.

24. Whether defendants did any of the acts attempted to be alleged in paragraph Ten of said indictment.

25. Whether defendants did cause to be prepared the certain agreement which it is alleged they would cause to be prepared. [94]

26. Whether defendants did any of the acts attempted to be alleged in paragraph Eleven of said indictment.

27. Whether the defendants did do any of the acts alleged in paragraph Eleven that they would do.

28. Whether the defendants did do any of the acts alleged in Paragraph Twelve of said indictment that they would do.



29. Whether the defendants did do any of the acts alleged in said paragraph Twelve that they should do.

30. How or in what manner the defendants or any other person could devise a scheme to be conducted at a loss for the purpose of deceiving persons into believing that profitable mining operations were conducted.

31. Whether the defendants did do any of the things that it is alleged they would do in paragraph Thirteen of said indictment.

32. Whether the defendants did do any of the things that it is alleged they would do in paragraph Fourteen of said indictment.

33. Whether the defendants did do any of the things that it is alleged they would do in paragraph Fifteen of said indictment.

34. Whether the defendants did do any of the things that it is alleged they should do in paragraph Fifteen.

35. Except from the legal conclusion of the pleader that any of the acts alleged in paragraph Fifteen of said [95] indictment prevented any person from discovering the true status of the mining venture.

36. Except from the legal conclusion of the pleader how many of the acts alleged in paragraph Sixteen prevented any person from taking action to protect his rights.

37. Whether the defendants did make any of

the false and fraudulent pretenses referred to in said paragraph Sixteen.

38. The time and place of making any false or fraudulent pretenses, etc., referred to in said paragraph Sixteen.

39. The person or persons to whom any false or fraudulent pretenses were made as referred to in paragraph Sixteen.

40. Except from the legal conclusion of the pleader that any typewritten, multigraphed or duplicated letter contained false or fraudulent pretenses referred to in said paragraph Sixteen.

41. The time and place of making any representation alleged or attempted to be alleged in subdivisions (a) to (s) inclusive in said paragraph Sixteen.

42. Except from the legal conclusion of the pleader that a representation that Frank S. Tyler was an engineer meant that Frank S. Tyler was a mining engineer.

43. How defendants could intend to convert all of the funds as alleged in subdivision (g) of paragraph Sixteen to their own use when it is alleged in subdivision (f) that [96] only a part of the funds were to be converted to their own use, and when it is alleged in paragraph Eight of said indictment that part of the funds were to be used to purchase certain mining claims.

44. Except from the legal conclusion of the pleader that the representation alleged in subdivi-

sion (i) of paragraph Sixteen had the meaning alleged in said subdivision (i).

45. When or at what time the defendants knew the things alleged in subdivision (i) of said paragraph Sixteen.

46. Except from the legal conclusion of the pleader that the representation alleged in subdivision (j) had the meaning alleged in said subdivision (j).

47. Except from the legal conclusion of the pleader that the representation alleged in subdivision (k) had the meaning attempted to be alleged in said subdivision (k).

48. Except from the legal conclusion of the pleader that the representation alleged in subdivision (l) had the meaning attempted to be alleged in said subdivision (l).

49. Except from the legal conclusion of the pleader that the representation contained in subdivision (m) had the meaning attempted to be alleged in said subdivision (m).

50. How or in what manner the defendants knew or could have known the things alleged in subdivision (q) of paragraph Sixteen.

51. How or in what manner the defendants knew or [97] could have known the things alleged in subdivision (r) of paragraph Sixteen.

52. The time and place referred to by the expression "then and there" repeatedly used in each of the subdivisions (a) to (s) inclusive of paragraph Sixteen.

53. How or in what manner the letter referred to in paragraph Seventeen of the said indictment and the letter referred to in nine separate counts in said indictment could have been mailed for the purpose of executing the scheme and artifice referred to in said indictment or attempted to be ascribed therein.

#### IX.

That each separate count in said indictment numbered from One to Sixteen thereof is uncertain in that it is not ascertained therefrom whether an attempt is made to allege the violation of Title 15, U. S. C. Ann., Sec. 77q, or a violation of Title 18, U. S. C. Ann., Sec. 338.

#### X.

That it does not appear that any of the representations, pretenses or promises claimed to have been made in paragraph Sixteen of said indictment, or in any other portion of said indictment relating to the statements made or claimed to have been made by the defendants, were of a material fact.

#### XI.

That it does not appear that any of the representations, pretenses or promises claimed to have been made in [98] paragraph Sixteen of said indictment, or in any other portion of said indictment, relating to the statements made or claimed to have been made by the defendants, were misleading.

## XII.

Count Seventeen—Conspiracy: That each of the preceding paragraphs is incorporated herein as a ground of demurrer to the Seventeenth count of said indictment as though each thereof was separately stated therein.

## XIII.

That it does not appear in said count Seventeen of said indictment whether any of the acts or things alleged in lines 15 to 26 inclusive were done or performed during the continuance of the conspiracy therein alleged, nor does the time or place of doing any of the acts alleged in said part of count Seventeen appear therein.

## XIV.

That as further ground of demurrer to each count in said indictment, said defendant specifies that Section 338, Title 18, U. S. C. Ann. has been repealed by the enactment of the provisions of Section 77q, Title 15, U. S. C. Ann.

## XV.

That said indictment and each separate count therein attempted to be alleged is barred by the operation of Title 18, Section 582, U. S. C. Ann.

## XVI.

That each separate offense attempted to be stated in [99] said indictment was and is barred by the Statutes of Limitations.

Wherefore, defendant, William Jackson Shaw, prays that this demurrer be sustained and that said indictment be dismissed and that this defendant be discharged.

HAROLD C. FAULKNER,  
Attorney for Defendant,  
William Jackson Shaw

Receipt of copy of the within demurrer admitted this 8th day of April, 1940.

BEN HARRISON  
United States Attorney  
By WILLIAM F. HALL, Asst.  
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 8, 1940. R. S. Zimmerman, Clerk, By Geo. E. Ruperich, Deputy Clerk.

[100]

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[Title of District Court and Cause.]

DEMURRER TO PLEA IN ABATEMENT.

The United States hereby demurs to the Plea in Abatement filed herein by defendant William Jackson Hall, on the following grounds:

I.

The Plea in Abatement fails to state facts sufficient to constitute a valid plea in abatement, in that no facts are stated therein from which it appears that said defendant was compelled to testify or produce evidence, documentary or otherwise, con-

cerning any transaction, matter, or thing which is the basis of this indictment, or otherwise.

II.

The plea in abatement fails to state facts sufficient to constitute a valid plea in abatement, in that it fails to state any facts showing that said defendant ever claimed any privilege against self-incrimination.

III.

The plea in abatement fails to state facts sufficient [101] to constitute a valid plea in abatement, in that it fails to state any facts to show that said defendant was compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documnetary or otherwise, with respect to any transaction, matter, or thing which is the subject of the present indictment, or otherwise.

Wherefore, plaintiff, United States of America, prays that this demurrer be sustained and that the said plea in abatement be denied.

Dated: April 29, 1940.

BEN HARRISON

United States Attorney

By WILLIAM F. HALL

Assistant United States  
Attorney.

[Endorsed]: Filed May 2, 1940. [102]

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE PLEA IN  
ABATEMENT

To: William Jackson Shaw and Harold C. Faulkner, his attorney:

You and each of you will please take notice and you are hereby notified that on Monday, May 6, 1940, in the court room of Judge Leon R. Yankwich, Federal Building, Los Angeles, California, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, the United States of America, by Ben Harrison, United States Attorney, will move to strike the Plea in Abatement filed herein on April 8, 1940.

The motion to strike said Plea in Abatement will be made on the grounds set forth in said motion attached hereto, upon the records and files of the above entitled matter, the affidavit of Milton V. Freeman attached to said motion, and points and authorities in support of the motion to strike the plea in abatement, filed herein.

Dated: April 29, 1940.

BEN HARRISON

United States Attorney

By WILLIAM F. HALL

Assistant United States Attorney

Attorneys for Plaintiff,

600 Federal Building

Los Angeles, California.

[Endorsed]: Filed May 2, 1940. [103]



[Title of District Court and Cause.]

MOTION TO STRIKE PLEA IN ABATEMENT

Comes now the United States of America, plaintiff herein, by and through its attorneys, Ben Harrison, United States Attorney, and William F. Hall, Assistant United States Attorney, for the Southern District of California, and moves to strike the plea in abatement filed herein by defendant William Jackson Shaw, on the following grounds:

I.

The plea in abatement fails to state facts sufficient to constitute a valid plea in abatement in that no facts are stated therein from which it appears that said defendant was compelled to testify or produce evidence, documentary or otherwise, concerning any transaction, matter, or thing, which is the basis of this indictment, or otherwise.

II.

The plea in abatement fails to state facts sufficient to constitute a valid plea in abatement, in that it fails to state any facts showing that said defendant ever claimed any [104] privilege against self-incrimination.

III.

The plea in abatement fails to state facts sufficient to constitute a valid plea in abatement, in that it fails to state any facts to show that said

defendant was compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, with respect to any transaction, matter or thing which is the subject of the present indictment, or otherwise.

#### IV.

The Affidavit of Milton V. Freeman, attached hereto and by reference made a part hereof, discloses that there is no valid ground upon which a plea in abatement can be based under (a) the Fifth Amendment to the Constitution, in that no right or privilege of the defendant Shaw under the Fifth Amendment was violated in the taking of his testimony, or (b) under Section 22 (c) of the Securities Act of 1933, as amended (Title 15, U. S. C. A., Section 77v, subdivision (c), in that it appears that the defendant Shaw did not refuse to answer questions on the ground that they might incriminate him, nor was he compelled, after asserting his privilege, to answer questions or produce documents.

Said motion is based upon the records and files of the within matter, said Affidavit of Milton V. Freeman and Points and Authorities in support of Demurrer to Plea in Abatement and in support of Motion to Strike Plea in [105] Abatement.

Wherefore, plaintiff, United States of America, prays that said Plea in Abatement be denied.

Dated: April 29, 1940.

BEN HARRISON

United States Attorney

By WILLIAM F. HALL

Assistant United States At-  
torney.

[Endorsed]: Filed May 2, 1940. [106]

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[Title of District Court and Cause.]

AFFIDAVIT OF MILTON V. FREEMAN

District of Columbia—ss.

Milton V. Freeman, being duly sworn, deposes and says as follows:

He is now and has been continuously since September, 1934, an attorney employed by the United States Securities and Exchange Commission, an agency of the Government of the United States. During the year 1936 said Securities and Exchange Commission having reasonable grounds to believe that the provisions of Sections 5 and 17 of the Securities Act of 1933 were being violated in connection with the sale of securities of Consolidated Mines of California, a corporation, directed that an investigation be instituted pursuant to the provisions of Sections 19(b) and 20(a) of said Securities Act of 1933. The said Commission, on June 9, 1936, designated the affiant as an officer to conduct such investigation and empowered the affiant, pur-

suant to Section 19(b) of the Securities Act of 1933, to administer oaths and affirmations, sub-[107] poena witnesses and take evidence.

On July 17, 1936 affiant called the defendant in the above-entitled cause, W. J. Shaw, before him and said defendant appeared voluntarily and without subpoena. The said defendant W. J. Shaw was then duly sworn on oath by affiant, pursuant to the powers granted him by the Commission. After ascertaining the defendant's name and address the affiant advised the said W. J. Shaw concerning his constitutional privilege against self-incrimination in the following words:

“At this time I must advise you that you may refuse to answer any question that I may ask you if the answer may tend to incriminate you or subject you to any penalty or forfeiture.”

Thereafter, on said July 17, 1936, and also on July 20, 1936 and September 2, 1936, the affiant proceeded to examine the said W. J. Shaw concerning his connection with the affairs of Consolidated Mines of California and the Stockholders' Protective Committee of the Monolith Portland Cement Company. Said Shaw was at all times during the course of said examination represented by counsel. A stenographic transcript of said Shaw's testimony was taken.

At no time during the course of the said examination did the said Shaw claim his privilege against

self-incrimination although he was advised concerning his rights when first sworn, as above set forth, and was reminded of those rights on each subsequent day on which his testimony was taken. [108] Affiant did not intend to grant the said defendant Shaw immunity from prosecution and affiant did not then believe and does not now believe that immunity from prosecution was granted to the defendant or to any other person called by affiant during the course of said investigation. On the contrary the affiant made every effort to make clear to the defendant the existence of his constitutional privileges.

(Signed) MILTON V. FREEMAN

Washington, District of Columbia

Subscribed and sworn to this 27th day of April, 1940 before me.

(Seal)

(Signed) ELINOR B. JOHANSON

Notary Public

[Endorsed]: Filed May 2, 1940. [109]

At a stated term, to wit: The February Term, A. D. 1940 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 14th day of June in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

Matters heretofore submitted are now determined as follows:

The Government's demurrer to the Defendant Shaw's plea in abatement is hereby sustained and the Government's motion to strike the same is hereby granted.

The grounds are given in the opinion filed herewith.

The defendant Shaw's demurrer to the Indictment is overruled as to all counts except Count 17.

The defendant Shaw's demurrer to Count 17 of the Indictment is sustained. Leave to resubmit the matter to the Grand Jury is granted.

The defendant Shaw's demand for a Bill of Particulars is hereby denied. Exception allowed. [110]

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[Title of District Court and Cause.]

OPINION

Appearances:

For the Plaintiff:

Ben Harrison,

United States Attorney

William F. Hall,

Assistant U. S. Attorney

Los Angeles, California

For the Defendant:

Harold C. Faulkner,

San Francisco, California [111]

Yankwich, District Judge.

On July 17, 1936, and prior and subsequent to that date, at Los Angeles, California, the United States Securities and Exchange Commission, through certain of its officers, was conducting under the authority of the Securities Act of 1933, 15 U. S. C. A. Secs. 77a et seq., an investigation into certain transactions involving, among others, the stock of the Consolidated Mines of California, a California corporation, operating in Calaveras County. In conjunction with the investigation, the Commission issued subpoenas directed to the corporation and its President and Secretary to appear, at the investigation, to be held on November 22, 1937, and there produce certain records of the company.

The corporation declined to respond to the subpoena. The Commission then applied to me, and I issued an order [112] directing obedience to the subpoena and requiring the production of the documentary evidence called for in it.

On appeal to the Circuit Court of Appeals for the Ninth Circuit, this order was affirmed. *Consolidated Mines of California v. Securities & Exchange Com.*, 1938, 9 Cir., 97 F. 2d 704.

Prior to July 17, 1936, William Jackson Shaw, the defendant, was requested to attend the hearing before the Commission by Milton V. Freeman, the Examiner conducting the investigation for the Commission. Shaw attended the hearing, was sworn by the Examiner, and testified on July 17, 1936, July 20, 1936, and September 2, 1936, as a witness concerning the affairs and conduct of the Consolidated Mines of California, a corporation.

The matters to which he testified related to the subject on which an indictment was returned in this court on December 12, 1939, against Shaw and Frank S. Tyler. The indictment consists of seventeen counts. The first thirteen counts charge violation of the Mail Fraud Statute, 18 U.S.C.A. Sec. 338. Counts fourteen to sixteen charge violation of the Securities Act of 1933—the sale of securities for which no registration statement was in effect and no exemption for registration available. 15 U.S.C.A. Secs. 77e (2). The seventeenth count charges conspiracy. 18 U.S.C.A. Sec. 88.



The defendant Shaw has filed a plea in abatement. In support of it, he claims that, as he was compelled to testify [113] against his will to matters out of which the indictment later arose, he is immune from prosecution under the provisions of Section 22 (c) of the Securities Act of 1933 as amended, 15 U.S.C.A. Sec. 77v (c). The Government has demurred to the plea in abatement and moved to strike it.

The enactment on which the plea of immunity is grounded reads: “(c) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.”

No subpoena compelling Shaw's attendance was

issued. His own affidavits merely state that he was requested to and did appear in response to the Examiner's request.

The affidavit of the Examiner discloses the fact that [114] Shaw was represented by counsel at the time of his appearance, that a stenographic report of his testimony was taken, and that before testifying, he was informed concerning his constitutional privilege against self-incrimination in the following words: "At this time I must advise you that you may refuse to answer any question that I may ask you if the answer may tend to incriminate you or subject you to any penalty or forfeiture." He took the stand and gave testimony. These facts are not denied. If they were, an issue of fact might be created as to which the defendant would be entitled to a jury trial. *Jones v. United States*, 9 Cir., 1910, 179 F. 584.

There is no need for this.

For we can decide the matter on the admitted facts contained in Shaw's sworn plea. Nowhere is it averred that Shaw raised the plea of self-incrimination or claimed immunity by reason of it.

We need not dwell, at length, upon the rule against self-incrimination contained in the Fifth Amendment to the Constitution of the United States. It is one of the great fundamentals of our constitutional liberty. Its enactment is traceable to the experience of ages past when convictions were secured upon confessions extracted by bar-

barous methods. This privilege, like all others, is a shield made for the protection of the individual against the arbitrary power of those charged with the enforcement of the law. (See my [115] article "Lawless Enforcement of the Law", 1935, 9 So. Calif. Law Review, 1-20)

It being made for the protection of the individual, he is privileged to waive it. The waiver may be by direct action or by failing to act.

Despite certain general statements in older cases to the contrary, the accepted view now sanctioned by the Supreme Court is that a waiver takes place when a defendant, who is not under compulsion, stands silent and does not claim the privilege. *Powers v. United States*, 1912, 223 U. S. 303; *Vajtauer v. Commissioner of Immigration*, 1927, 273 U. S. 103, 113; *United States v. Murdock*, 1931, 284 U. S. 141, 148; and see: *United States v. Skinner*, D. C. N. Y., 1914, 218 Fed. 870; *Johnson v. United States*, 4 Cir., 1925, 5 Fed. (2d) 471, 476, 477; *United States v. Lay Fish Co.*, D. C. N. Y. 1926, 13 Fed. (2d) 136; *United States v. Greater New York Live Poultry Chamber of Commerce*, D. C. N. Y., 1929, 33 Fed. (2d) 1005.

Enactments like Section 22 (c) of the Securities Act of 1933, (15 U.S.C.A. 77v (c)) by granting immunity, do away with the harm resulting from self incrimination under compulsion. *Brown v. Walker*, 1896, 161 U. S. 591.

When there is no compulsion, and there is a voluntary appearance, all grounds for the application of the guaranty [116] are gone. (*Sherwin v. United States*, 1925, 268 U. S. 369.) "The privilege of silence," said the Court in *United States v. Murdock*, 284 U. S. 141, 149, "is solely for the benefit of the witness and is deemed waived unless invoked." The individual character of the privilege and the scope of its protection speak for the wisdom of such an attitude.

As Mr. Justice Holmes said in *Heike v. United States*, 1912, 227 U. S. 131, 142; statutes of this character are "coterminus with what otherwise would have been the privilege of the person compelled." It is consistent with similar rulings arising under other constitutional guaranties.

Thus, proceeding to enter a plea, with knowledge of the nature of the charge and without a specific demand for counsel, is considered a waiver of the right to counsel. *Cooke v. Swope*, D. C. Wash., 1939, 28 F. Supp. 492; *Cooke v. Swope*, 9 Cir., 1940, 109 Fed. (2d) 955.

The right to a jury trial may be waived by conduct or inaction, in civil cases. (*Bank of Columbia v. Okely*, 1819, 4 Wheat. 235; *Maytag v. Meadows Mfg. Co.*, 7 Cir., 1930, 45 Fed. (2d) 299; *Prince Line v. American Paper Exports*, 2 Cir., 1932, 55 Fed. (2d) 1053; *Smith Engineering Co. v. [117] Pray*, 9 Cir., 1932, 61 Fed. (2d) 687), although an express waiver is needed in criminal cases. See:

Patton v. United States, 1930, 281 U. S. 276; Irvin v. Zerbst, 5 Cir., 1938, 97 Fed. (2d) 257; Spann v. Zerbst, 5 Cir., 1938, 99 Fed. (2d) 336. And see: Jones v. United States, 9 Cir., 1910, 179 F. 584.

These rights are as fundamental in our scheme to give to the individual a domain of protection where the sovereign cannot enter as the right against self-incrimination. Rightly, all may be waived by him whom they seek to protect.

The demurrer to the plea of abatement is sustained and the motion to strike it is granted.

Dated this 14th day of June 1940.

LEON R. YANKWICH

United States District Judge.

[Endorsed]: Filed Jun. 14, 1940. [118]

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At a stated term, to wit: The February Term, A. D. 1940 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 17th day of June in the year of our Lord one thousand nine hundred and forty.

Present: The Honorable Leon R. Yankwich, District Judge.

[Title of Cause.]

This cause coming on for plea of defendant William Jackson Shaw as to each of the remaining

counts; R. E. Lazarus, Assistant U. S. Attorney, appearing as counsel for the Government; Harold Faulkner, Esq., appearing as counsel for the said defendant, who is present:

The said defendant waives reading of the Indictment, and pleads not guilty, and it is ordered that the cause be, and it hereby is, continued for the Term for setting for trial. [119]

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At a stated term, to wit: The February Term, A. D. 1941 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 17th day of June in the year of our Lord one thousand nine hundred and forty-one.

Present:

The Honorable: Leon R. Yankwich, District Judge  
[Title of Cause.]

This cause coming on for trial of defendant William Jackson Smith; Maurice Norcop and E. H. Law, Assistant U. S. Attorney, appearing as counsel for the Government; Defendant Shaw being present in custody; and B. A. Bell, Court Reporter, being present and reporting the testimony and the proceedings:

The Court asks if the defendant is able to proceed, and the defendant says he is, but is not able to hire counsel because he is a pauper, and that if the Court will appoint counsel he is ready to go to trial. The Court makes a statement and appoints C. C. Montgomery, Esq., as attorney for the defendant.

Report of Dr. Kersten is filed and the bond of defendant exonerated.

It is ordered that a jury be impaneled for the trial of this cause, whereupon the clerk draws the names of the following twelve jurors, who take places in the jury box, viz.: Adolf F. Schumacher, H. Haywood, Lloyd H. Smith, John K. Veeder, Geo. R. Hippard, E. Dick Badham, Eldon H. Richberger, Elisha J. Benton, Lewis Matthias, Geo. H. Daniels, Edw. A. Raulston, and Eugene M. Berger, who are examined *for by* the Court and by Attorneys Norcop and Montgomery, respectively, and passed for cause.

The Government waives peremptory challenge.

Adolf F. Schumacher is excused on defendant's peremptory challenge and it is ordered that another name be drawn, whereupon [120] the clerk draws the name of Leonard A. Bachman, who is examined by the Court for cause and by Attorney Norcop for cause.

The defendant accepts the jury, and the jurors now in the box are sworn as the jury for the trial of this cause, viz.:

## The Jury

1. Leonard A. Bachman
2. H. Haywood
3. Lloyd H. Smith
4. John K. Veeder
5. Geo. R. Hippard
6. E. Dick Badham
7. Eldon H. Richberger
8. Elisha J. Benton
9. Lewis Matthias
10. Geo. R. Daniels
11. Edw. A. Raulston
12. Eugene M. Berger

The Court orders that two alternate jurors be selected and the clerk draws the names of W. Elmo Reavis and Eric D. Henschel, who are examined for cause.

Eric D. Henschel is excused on peremptory challenge by the Government and it is ordered that another name be drawn, whereupon the clerk draws the name of John F. Meredith, who is examined for cause by the Court and questioned by Attorney Montgomery.

W. Elmo Reavis is excused on defendant's peremptory challenge and it is ordered that another name be drawn, whereupon the clerk draws the name of Reuben F. Ingold, who is examined by the Court for cause, and is excused, and it is ordered that another name be drawn; whereupon, the clerk draws the name of Max H. Schumacher, who is examined for cause by the Court.



Max H. Schumacher and John F. Meredith being accepted as alternate jurors are sworn.

Reading of the Indictment is waived. [121]

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[Title of District Court and Cause.]

VERDICT

We, the Jury in the above entitled cause, find the defendant, William Jackson Shaw, Not Guilty as charged in the 1st count of the Indictment, and Not Guilty as charged in the 2nd count of the Indictment, and Not Guilty as charged in the 3rd count of the Indictment, and Not Guilty as charged in the 4th count of the Indictment, and Not Guilty as charged in the 5th count of the Indictment, and Not Guilty as charged in the 6th count of the Indictment, and Not Guilty as charged in the 7th count of the Indictment, and Not Guilty as charged in the 8th count of the Indictment, and Not Guilty as charged in the 9th count of the Indictment, and Not Guilty as charged in the 10th count of the Indictment, and Not Guilty as charged in the 11th count of the Indictment, and Not Guilty as charged in the 12th count of the Indictment, and Not Guilty as charged in the 13th count of the Indictment, and Guilty as charged in the 14th count of the Indictment, and Guilty as charged in the 15th count of the Indictment, and Guilty as charged in the 16th count of the Indictment.

Dated: Los Angeles, California, July 9th, 1941.

EUGENE M. BERGER

Foreman of the Jury.

[Endorsed]: Filed Jul 9 1941. R. S. Zimmerman,  
Clerk. By Louis J. Somers, Deputy Clerk. [122]

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[Title of District Court and Cause.]

MOTION OF DEFENDANT SHAW FOR A  
NEW TRIAL AS TO COUNTS 14, 15 AND 16

Comes now the defendant above named and moves to set aside the verdict and grant a new trial as to Count No. 14 as to sale and delivery to Dr. Homer J. Arnold and Florence R. Arnold of a certain security, no registration statement being in effect as to said security, etc., on the ground that the evidence is insufficient to sustain that the defendant knowingly, unlawfully, wilfully, or feloniously caused such delivery to be made.

The defendant further moves to set aside the verdict and grant a new trial as to Count No. 15 as to the sale and delivery to Regina Woodruff of a certain security, no registration statement being in effect as to said security, etc., on the ground that the evidence is insufficient to sustain that the defendant knowingly, unlawfully, or wilfully, or feloniously caused such delivery to be made.

The defendant further moves to set aside the verdict and grant a new trial as to Count No. 16

as to the sale and delivery to J. C. and E. M. Goodrich of a certain security, no registration statement being in effect as to said security, etc., on the ground that the evidence is insufficient to sustain that [123] the defendant knowingly, unlawfully, or wilfully, or feloniously caused such delivery to be made.

The defendant moves to set aside the verdict and grant a new trial as to Count No. 14 on the ground that the verdict is contrary to the evidence, which shows that the defendant in good faith, believed that it was not necessary for a registration statement to be filed under the Securities Act of 1933, as amended, for delivery to be made.

The defendant moves to set aside the verdict and grant a new trial as to Count No. 15 on the ground that the verdict is contrary to the evidence, which shows that the defendant in good faith, believed that it was not necessary for a registration statement to be filed under the Securities Act of 1933, as amended, for delivery to be made.

The defendant moves to set aside the verdict and grant a new trial as to Count No. 16 on the ground that the verdict is contrary to the evidence, which shows that the defendant in good faith, believed that it was not necessary for a registration statement to be filed under the Securities Act of 1933, as amended, for delivery to be made.

Defendant further moves that the verdict be set aside and a new trial be granted on the ground of errors of law in the giving of instructions as to the

transactions covered by Counts 14, 15, and 16, as excepted to at the time.

CHAS. C. MONTGOMERY  
Attorney for Defendant  
William Jackson Shaw

[Endorsed]: Received copy of the within Motion this 11 day of July 1941.

WM. FLEET PALMER,  
United States Attorney  
By MAURICE NORCOP,  
Asst. U. S. Atty.  
for the Plaintiff.

[Endorsed]: Filed Jul 11 1941. R. S. Zimmerman, Clerk. By Louis J. Somers, Deputy Clerk. [124]

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At a stated term, to wit: The February Term, A. D. 1941 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 11th day of July in the year of our Lord one thousand nine hundred and forty-one.

Present:

The Honorable: Leon R. Yankwich, District Judge  
[Title of Cause.]

This cause coming on for sentence of defendant Shaw on counts 14, 15 and 16, and for sentence of defendant Tyler following plea of nolo contendere

on the 16 counts of the indictment; Maurice Norcop and Ed. H. Law, Assistant U. S. Attorneys, appearing as counsel for the Government; Chas. C. Montgomery, Esq., appearing as counsel for defendant William Jackson Shaw, who is present; Arch Ekdale, Esq., appearing as counsel for defendant Frank S. Tyler, who is present, and A. Wahlberg, Court Reporter, being present and reporting the proceedings:

Attorney Montgomery files motion for a new trial as to defendant Shaw and argues said motion, Attorney Sobieski of the Securities Exchange Commission replies, Attorney Norcop makes statement, and it is ordered that the motion for a new trial be, and it is hereby, denied. Exception noted. [125]

\* \* \* \* \*

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District Court of the United States, Southern  
District of California, Central Division

No. 14200 Y. Criminal indictment in 17 counts for violation of U. S. C., Title 15, Sec. 77q(a)(2); Title 18 U. S. C. Sec. 88, Title 18 U. S. C. Sec 338

United States

v.

William Jackson Shaw.

## JUDGMENT AND COMMITMENT

On this 15th day of September, 1941, came the United States Attorney, and the defendant, William Jackson Shaw, appearing in proper person, and with counsel, and,

The defendant having been convicted on trial by jury of the offenses charged in the 14th, 15th & 16th counts in the above-entitled cause, to wit failing to register stock with the Securities and Exchange Commission sold outside of California.

Defendant was found not guilty on counts 1 to 13 inclusive, and demurrer was sustained to the 17th count, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the jail type to be designated by the Attorney General or his authorized representative for the period of six months on the fourteenth count of the indictment, and for the term of six months on the fifteenth count of the indictment and for the term of six months on the sixteenth count of the indictment and it is further ordered that the terms imposed on the fifteenth and sixteenth counts run concurrently, and also concurrently with the term imposed on the

fourteenth count. The total term of imprisonment herein is six months.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH

United States District Judge.

Filed this 15th day of September 1941.

R. S. ZIMMERMAN

Clerk

(By) LOUIS J. SOMERS

Deputy Clerk. [126]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT  
COURT OF APPEALS

Name and address of appellant: William Jackson Shaw, Chase Diet Sanitarium, 1032 West 18th Street, Los Angeles, California.

Name and address of appellant's attorney: Charles C. Montgomery, 918 Pershing Square Building, Los Angeles, California.

Offense: Violation of Securities and Exchange Commission Act of 1933 by knowingly, unlawfully, wilfully, and feloniously causing to be delivered by the United States mails certain securities, to-wit:

certificates of the capital stock of Consolidated Mines of California, a corporation, no registration statement being in effect as to such securities and no exemption for registration being available.

Date of judgment: September 15, 1941.

Brief description of judgment or sentence: Judgment of conviction as to appellant who was sentenced to imprisonment for six months under *count* 14, six months under *count* 15, and six months under *count* 16, the sentences to run concurrently, maximum sentence six months. [127]

Appellant has been at liberty under bail.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Pursuant to Rule 5 I hereby serve notice that I do not elect to enter upon service of the sentence pending appeal.

Dated: September 15, 1941.

WILLIAM JACKSON SHAW

Appellant

CHARLES C. MONTGOMERY

Attorney for Appellant

Grounds of Appeal:

1. There was no evidence to support a verdict of guilt on the part of this defendant and appellant under any of the Counts 14, 15 and 16, and the Court should have dismissed the matter at the close of the Government's case.



2. There was no evidence to support a verdict of guilt on the part of this defendant and appellant, and the Court should have dismissed the matter as to this defendant and appellant.

3. Error in failure to grant this defendant's motion for new trial.

4. Errors of law committed by the Court in the giving of instructions to the jury as to liability under the Securities Exchange Act, to which exceptions were duly taken at the time.

[Endorsed]: Received copy of the within Notice of Appeal this 15th day of September, 1941.

WM. FLEET PALMER,

United States Attorney.

By MAURICE NORCOP,

Assistant United States Attorney

[Endorsed]: Filed Sep. 15, 1941. [128]

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[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

I.

The evidence is insufficient to sustain the verdicts and judgments. The record shows plain error on its face in holding that the evidence is sufficient to justify the verdicts and judgments. The evidence is insufficient in these respects:

1. The evidence shows that no stock certificate was mailed or transported in interstate commerce and that the mailing of the stock certificates was from one point within the City of Los Angeles to another point in the City Los Angeles.
2. The evidence of shipment of the stock is contained in the testimony of the following witnesses:

EVA M. GOODRICH

a witness for the Government, testified as follows:

Direct Examination

I live at 1336 West 47th Street, Los Angeles. On or about the 1st of June 1937 I owned some shares of stock in the Midwest Company. I traded them for Consolidated Mines. As to stock certificate No. 742 calling for 18 shares of Consolidated Mines of California which appears to be issued in the name of J. C. Goodrich and E. M. Goodrich, joint tenants, with full right of survivorship, which certificate is dated the 8th day of June 1937, and appears to be signed by Frank S. Tyler, secretary, and bearing, apparently, the rubber stamp signature of H. L. Wikoff, president. I received the stock certificate in this envelope through the United States mails, postage prepaid.

(Certificate and envelope offered in evidence.)

(Objected to on the ground that there is no foundation for it, no connection of Mr. Shaw with any deal of Mr. Tyler with respect to selling stock of this character.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 54.")

(Subject to reserved Motion to Strike.)

(There was offered a certification by the Securities and Exchange Commission that the stock of this company was neither registered with the Commission nor any exemption granted by the Commission to the registration of the same.)

Mr. Montgomery: We have no objection to the certificate as proof of the facts it states, but we object to any proof of the fact with respect to this defendant Shaw on the grounds heretofore stated, that he hasn't been connected with it.

The Court: Subject to that reservation the objection will be overruled and it may be received in evidence.

(The document referred to was received in evidence and marked "Government's Exhibit No. 55.")

(Subject to reserved objection.)

By Mr. Norcop:

“United States of America

“Securities and Exchange Commission

“I, Francis P. Brassor, Secretary of the Securities and Exchange Commission, Washington, D. C., which Commission was created by the Securities Exchange Act of 1934 (15 U. S. C. A., Sec. 78a et seq.), and official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission, pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchanges Act of 1934, do hereby certify that:

“A diligent search has this day been made of the books and records of this Commission, and the books and records do not disclose that any registration statement has even been filed with this Commission under the name of Consolidated Mines of California, pursuant to the provisions of the Securities Act of 1933 and/or the Securities Act of 1933 as amended.

“In witness whereof I have hereunto subscribed my name and caused the seal of the Securities and Exchange Commission to be affixed this 13th day of May, A. D., 1941, at Washington, D. C.

“FRANCIS P. BRASSOR

“Secretary.”

Affixed thereon, as you can see, is the seal in due course.

(Rep. Tr. p. 509, line 5 to p. 516, line 6.)

EVA M. GOODRICH,

further testified:

I owned some stock in the Midwest. I had 18 shares, and I received 36 of the Mines. After I made that exchange, that was when I received the certificate through the mail representing the 36 shares of Consolidated Mines.

(Rep. Tr. p. 917, lines 1-21.)

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REGINA WOODRUFF

a witness for the Government, testified as follows:

Direct Examination

I have my stock certificate with me.

By Mr. Norcop:

Q. Now, this certificate which is photographed in the indictment, No. 741, for 30 shares is dated the 13th of May 1937, and did that come to you through the United States mails, Miss Woodruff?      A. It did.

Prior to receiving this I had had a transaction with the Consolidated Mines of California. I talked with someone who was there and said he was Mr. Shaw. That was by telephone. I

called up the office and asked for Mr. Tyler. Most of the letters which I had received had been from Mr. Tyler, and I had called once or twice before and I asked for information and had talked with Mr. Tyler. I asked for Mr. Tyler and was told that he was no longer in the office, but that I might talk with Mr. Shaw, and that was the first time that I even knew that Mr. Shaw was connected with the thing at all. I hadn't had any information in regard to the Consolidated Mines for some time, and I wanted to know what was being done, and why, and just what progress was being made, and he assured me that everything was fine and that he was working without salary and he was hoping that the thing would be paying very, very soon because he wanted to be drawing a salary, and that he was quite sure that it would be paying us dividends and we would get our money back within a reasonable length of time; and he wanted me to convert my Midwestern stock into the Consolidated Mines, and he offered me—I had 30 shares of Midwestern, Monolith Midwestern, stock—and he offered me 60 shares for it. I think that is the substance of it.

I had a certificate for 30 shares of Monolith Midwestern, stock, and Mr. Shaw's offer was to give me 60 shares of this Consolidated Mines for that. I sent it in and I received through

the mails this certificate and I immediately called the office again and at that time I asked for Mr. Shaw and said that I had been told that I would receive 60 shares and had received only 30, and he said, "Well, that was a very serious mistake," and he would see that I got the other 30, which I did. (Certificate offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 77.")

I am a school teacher.

#### Cross Examination

I got another 30. I would be very happy to show it to you. My certificate is for the Monolith Portland. I had both common and preferred Monolith stock. I had 15 shares of preferred and 15 shares of common, both of which I had bought through Mr. Shaw's office quite a number of years ago, and that was converted over into this 123 shares. I don't know how much was for the common and how much for the other, because I got the one certificate and I don't know what the basis was there.

I reside in Los Angeles.

(Rep. Tr. p. 200, line 10 to p. 202, line 5.)

## HOMER J. ARNOLD

a witness for the Government, testified as follows:

## Direct Examination

As to this photostatic copy of a certificate of Consolidated Mines of California, numbered 732, for 250 shares of the stock of that corporation, dated the 14th day of December 1936, made out in the name of Homer J. Arnold and Florence R. Arnold, joint tenants with full rights of survivorship, and signed apparently Frank S. Tyler, secretary, and H. L. Wikoff, president—I received the original certificate of which that is a photostatic copy. Prior to receiving it, I was an owner of shares of the Monolith Midwest. In fact, I did have them in both. My stock in the Midwest was sold for \$420 and the cash given to me. I had that transaction with Mr. Shaw. That was prior to the date that this certificate of mining stock bears. After that, I decided to put that money into the mine, the Consolidated Mining Company. Most of my talking was done with Mr. Shaw. I put \$420 in cash into the Consolidated Mines of California, and then I suggested that if he would, I would like to make it a little more—Shaw was under my care for quite a period of time—say make \$80 of it that he would take out in treatments, for a total of \$500. Represented by the 250 shares, making



it \$2.00 a share. Then I received, when the deal was finally consummated, through the mails, this stock certificate No. 732 of which this is a photostatic copy. I have that certificate.

(Rep. Tr. p. 918, line 1 to p. 920, line 17.)

### HOMER J. ARNOLD

a witness for the Defendant, testified as follows:

#### Direct Examination

I testified yesterday afternoon with respect to certificate No. 732 for 250 shares made out to myself and wife as joint tenants.

Mr. Shaw had told me about it, the first time I heard of it, although I did see Mr. Shaw quite regularly. The first I had heard of it was when Mr. Morgan got my name, evidently from the committee list, and called about this transfer that some of them were making. But I didn't talk with him any further.

Then the next time I saw Mr. Shaw I spoke to him about it. He said he was keeping me in mind but he was waiting until things got a little further along before he said anything to me about it.

Mr. Morgan called me on the telephone. The time I discussed this with Mr. Shaw was some weeks or a few months prior to the month of December 1936. I think that was when I got the stock.

Mrs. Arnold was present at that conversation, outside of Mr. Shaw and myself.

At different times different things were said. It wasn't any one conversation, but it was about the general prospects of the mine.

He said that it wasn't a big mine, but what ore there was was running pretty high grade, around, as I remember it, \$18; that if they could get a mill of about 25 tons on there it ought, in time, to turn out a reasonable profit. He did not tell me who else was in the deal.

I have known Mr. Shaw since 1924. He has been a patient of mine through that time, and besides that I have considered him a very good friend, and he has given me quite a little business advice from time to time.

I got cash for the sale of my Monolith,—\$420. Then \$80 was added to that for medical services. So that I put \$500 in that proposition.

Mr. Shaw only told me about the deal, if I would invest it would have a very good chance of turning out quite a reasonable profit, and at any time that I wasn't satisfied, why, he would give me my money back. I never asked for my money back. I was never dissatisfied with his part of it.

I treated Mr. Shaw. I practice osteopathic work. I am blind.

At the time that Mr. Hughes and his partner—I have forgotten his name—first came out to talk to me about the—I think it was two years

ago this summer when they first came out—they wanted a statement at that time as to what our dealings had been, and then at a later time they came to me again. That is when they asked for the stock certificate, and I hesitated in handing it out—I don't know, I never cared to just turn loose on any certificate that I had, even if it was to a Government representative—and so I asked Mr. Shaw in the meantime—I told him that they were asking me these questions and wanted my certificate, and was it all right. And he said, “By all means. Go ahead and give it to them and give every cooperation and everything that they want to know. Don't hold back anything.

I let them have the certificate then, and I gave them a statement as to the best of my recollection. They took it and wrote it up and had me sign it.

(Rep. Tr. p. 1174, line 8 to p. 1179, line 21.)

## II.

The Evidence Is Insufficient to Sustain the Verdicts and Judgments on Each Count in that the Evidence Was that the Stock Was Personally Owned Stock and There Was Therefore No Requirement to Register It Under the Securities Exchange Act.

## III.

The Demurrer to Counts 14, 15 and 16 Should Have Been Sustained. The Indictment Fails to State an Offense as to Each of These Counts.

## IV.

The Securities and Exchange Act, Inherently and as Construed and Applied in this Case, Is Unconstitutional, in Violation of the Fifth Amendment to the Constitution of the United States, in Requiring Registration of Personally Owned Stock.

## V.

The Securities and Exchange Act, Inherently and as Construed and Applied in this Case, Is in Violation of the Fifth Amendment to the Constitution of the United States in that It Provides for a Different Rule or Regulation in the Use of the Mails Than It Does to Other Forms of Interstate Commerce.

## VI.

The Securities and Exchange Act, Inherently and as Construed and Applied in this Case, Is Unconstitutional in that It Forbids the Free Use and Enjoyment of Personally Owned Property and Interferes with the Rights of the State to Regulate Its Own Securities.

## VII.

The District Court Erred in Giving the Following Instruction, to Which an Exception Was Noted:

“The Section of the Act which the defendant Shaw is charged with violating is Section 5(a) (2), which reads as follows:

“ ‘Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

“(2) ‘To carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.’

“In determining whether or not there has been a willful violation of this Section, as alleged in Counts 14, 15, and 16, you must determine whether or not there was a registration statement in effect as to the shares of stock of Consolidated Mines of California, whether or not such securities were actually sold to the witnesses Goodrich, Arnold and Woodruff, or any of them, and you must further determine whether or not the defendant Shaw caused any of such securities of the Consolidated Mines of California to be carried through the mails for sale or for delivery after sale.

“The burden of showing an exemption from registration, if exemption is claimed, rests on the defendant. The fact that the stock sold was or was not personally owned stock is immaterial so far as the Federal Securities Act is concerned.”

#### VIII.

The District Court Erred in Holding that the Statute of Limitations Did Not Apply to Counts 14, 15 or 16.

#### IX.

The District Court Erred in its Opinion, Decision and Determination in Overruling the Demurrer to the Indictment and Each Count Thereof.

## X.

The District Court Erred in its Decision and Determination in Sustaining the Demurrer of the Government to the Defendant's Plea in Abatement.

## XI.

The District Court Erred in its Decision, Determination and Order in Denying Defendant's Motion for New Trial by Jury on the Issue of Fact Raised by the Plea in Abatement.

## XII.

The District Court Erred in its Decision, Determination and Opinion in Determining that it *Had and Had* Jurisdiction of the Offense.

Respectfully submitted,

MORRIS LAVINE,

Attorney for Apellant.

[Endorsed]: Filed Jan. 27, 1942.

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[Title of District Court and Cause.]

BILL OF EXCEPTIONS.

THOMAS J. ALLEN

a witness for the Government, testified as follows:

I lived at 3307 Harrison Street, Corvallis, Oregon, about 21 years. Mr. Frank S. Tyler alone called upon me in my home city about the fore part of 1936. I was at my recreation parlor at 134 South Second Street. We had a conversation and no one

(Testimony of Thomas J. Allen.)

else was present listening or participating. Mr. Tyler said he represented the stockholders committeemen on this Monolith stock that had been deposited, and asked me how many shares I held. I told him. He finally brought up the conversation relative to the fact that the Monolith stock was in bad shape and the committee was turning their stock other ways and wanted to know if I would turn my stock into mining stock. He said that it looked very good, looked like the surest way to get your money back that you had invested in the Monolith stock; that there would be no salaries paid to the officers of the mining stock until the stockholders of the Monolith got their money back; that they had the first choice in this and nobody else would have a chance at this mining stock except the stockholders committeemen that had put their stock on deposit with the bank. I asked him a few questions. I brought up the question what Mr. Morgan was doing with his stock. He said Mr. Morgan was going with the mining stock, with the committee stockholders. I said, "Put mine in, too. It seems there is no way to get any recovery from the Monolith stock."

He asked for my certificate of deposit of my stock at the bank. I went to my safety deposit box, but couldn't find it. I don't remember whether I ever received a receipt for the deposit of my stock. But I turned it in. He gave me a slip and said that if I was willing to turn my stock into the mining

(Testimony of Thomas J. Allen.)

stock, which he thought was best, that he would fix up the form that I would sign which would release my stock at the bank. He gave me this form and, to my recollection, that is about the transaction between me and Mr. Tyler. I had 138 shares of stock in the Monolith Cement Company deposited in the Pacific National Bank in San Francisco. There was no discussion as to valuation of the shares. Later I received a certificate for stock which I have with me.

(The document referred to was received in evidence and marked "Government's Exhibit No. 2.")

In March 1936 I received a document pertaining to the transaction.

(The document referred to was received in evidence and marked "Government's Exhibit No. 3.")

I have seen a document which seems to be a carbon copy of a letter, and my signature appears on there.

(The document referred to was received in evidence and marked "Government's Exhibit No. 4.")

I have seen what purports to be a part of a letter.

(The document referred to was received in evidence and marked "Government's Exhibit No. 5.")

(Read by Mr. Norcop)



(Testimony of Thomas J. Allen.)

(EXHIBIT No. 3)

is, as you may see, a carbon copy on onionskin paper dated March 18, 1936. It states:

“Mr. Frank S. Tyler,  
“634 South Spring Street,  
“Los Angeles, California.

“Dear Mr. Tyler:

“In consideration of 138 shares of Monolith Portland Midwest Company preferred stock and no dollars cash, receipt of which you hereby acknowledge, you agree to deliver to me 138 shares of your personally owned stock of the Consolidated Mines of California.

“Yours very truly.”

There is no signature, but on the lower left-hand corner is typed “Accepted by Frank S. Tyler.”)

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I signed this as an agreement. The letter was not written by me. I was under the impression that Mr. Tyler wrote it, but I don't know.

(Another carbon copy of a letter dated March 30, 1936, read by Mr. Norcop)

“Monolith Stockholders Committee,  
“Los Angeles, California.

“Gentlemen:

“I hereby certify that I am the legal owner of the certificate of deposit representing 138

(Testimony of Thomas J. Allen.)

shares of the Monolith Midwest Cement Company stock deposited with the Pacific National Bank of San Francisco, California, under a certain depository agreement made through your committee.

“I further certify that this certificate of deposit has been lost and that I have made diligent search for it but have not been able to find same.

“I request that your committee obtain the release of the original stock certificate represented by the lost certificate of deposit, and I instruct you to deliver same to Frank S. Tyler from whom I have received value in full.

“I hereby agree that in the event I should find the certificate at some future date I will immediately forward same to your committee for cancellation. I further agree to hold you, Pacific National Bank or Frank S. Tyler harmless from any damage you may suffer through fraudulent presentation of the lost certificate of deposit.

“Very truly yours,

“THOMAS J. ALLEN.”

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Mr. Tyler stated that through the mining stock we would received our money back that we had invested in the Monolith Company, by taking stock in this mine. I paid \$10 per share for my Monolith Midwest preferred.

(Testimony of Thomas J. Allen.)

Cross Examination

Mr. Frank S. Tyler saw me with regard to this exchange. I do not remember if I saw Mr. Tyler in 1935 before this transfer was made. I thought I had a certificate of deposit for the stock that was turned into the bank. When asked for it, I went to my safety deposit box, and it wasn't there. I signed the slip that I had lost my receipt for the stock. My stock was never lost. This is the document that I signed to release my stock to Mr. Tyler in place of my receipt, and if I am not mistaken, I signed another slip. Exhibit 4 is the one that I signed releasing my stock. The Monolith stock was fluctuating up and down. I don't know how much it was worth at that time. One day it would be worth \$1.50, maybe a few days later the quotation would be \$3; it was anywhere from \$1.50 to \$2, \$3, along in there. It was never listed up there on the exchange that I ever seen. I haven't got those quotations from Mr. Morgan. I never had any transaction on a market, but there is a market for all stock at some price. I don't recall what Mr. Morgan quoted this stock as being worth. When I took this stock it was a gambling proposition and I lost, and I never paid any more attention to it.

I don't recall whether it was the Monolith Midwest or the Monolith Cement Company that I had my stock in. I checked this letter that I signed. That is evidently the stock that I had, for that is

(Testimony of Thomas J. Allen.)

what I traded, this Monolith Midwest. I don't know anything about the value of the Monolith Midwest at that time; only that it wasn't giving any dividends and they said it was in bad shape.

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### MILTON G. ALEXANDER

a witness for the Government, testified as follows:

#### Direct Examination

My occupation is designing and building of tool dies, jigs, fixtures, and special machinery. I came out here in September 1907 and lived here until June 1918 and returned again in about June 1932 and left about December 20, 1935. In 1918 I lived in Detroit up until about 1929 and then I spent about two and a half to three years in Pittsburgh. I went back to Detroit for about three or four weeks before I came out to California. Just immediately prior to June 1932 I was selling conveyors, speed reducers, and special machinery for the Palmer Bee Company. I had never been a salesman up to that time for securities. I have known W. J. Shaw since 1932, and I have known Frank S. Tyler since about the latter part of June 1918. W. J. Shaw's wife is my cousin, Edna Shaw. The same relationship exists to Frank S. Tyler. Mrs. Shaw and Mrs. Tyler are sisters. I contacted W. J. Shaw very shortly after I got here. W. J. Shaw lived at the Ocean Beach

(Testimony of Milton G. Alexander.)

Hotel at Ocean Park, or Ocean Park Hotel, I forget which it is, down there on the beach. I went out there quite often. Immediately after I came to California in June 1932 I was not exactly employed.

I had a conversation with W. J. Shaw at his home in June or July of 1932 in regard to employment, and Mr. Shaw suggested that I come to work for him. I knew Mr. Shaw's business was along the lines of securities. Mr. Shaw explained to me at that time that he had a stockholders committee that he thought I could get some employment from if I could go out and collect 50 cents a share from the stockholders. After several conversations which possibly lasted a course of three or four or maybe five weeks, Mr. Shaw made an appointment with me to come down to his office and to have a talk down there with he and someone else; I believe it was Mr. Griffith was there at the time, too. I recall going down to the office. I had a conversation there in the office with Mr. Shaw. I don't recall if anybody else was present during the conversation. The conversation was merely to inform me of what the function of the committee was—merely to collect 50 cents a share from the various stockholders of the Monolith Portland Cement Company and the Monolith Portland Midwest Company, for the propagation of a suit against Coy Burnett, I believe, and other defendants, in favor of the stockholders, and the reason for such a suit was misrepresentation of the sale of stock, misappropriation of funds, and a

(Testimony of Milton G. Alexander.)

few other counts that I don't recollect at the present moment what they were. My duties were to collect these funds at the rate of 50 cents per share and if the stockholders couldn't afford to put up 50 cents a share right then, we would take 25 cents a share; in 30 or 60 or 90 days they could pay the other 25 and make a total of 50 cents a share. And that was my entire duty. I would be working on a commission basis to collect those funds. I went to work for the committee at that time; and Mr. Shaw appointed a Mr. Griffith to have me go around with on two or three different calls so that I could become accustomed of how to approach the stockholders.

Prior to the time that I went out, I don't recall having a conversation with anybody other than Mr. Shaw in regard to my employment by this Monolith committee, unless Mr. Griffith might at that moment have had something to say about it. I don't know. The members of that committee were Mr. Harding, Mr. La Grange, and Mr. Morgan. Mr. Griffith was not of the committee to my recollection. I don't believe Mr. Shaw was except that I believe he was chief investigator. The only person who employed me to work for that committee was Mr. Shaw.

As far as instructions were concerned, I don't believe there were very many of those. However, there was a considerable amount of documentary evidence such as audits and various other forms of evidence against the Monolith directors or whoever were the defendants in that suit. It was all written

(Testimony of Milton G. Alexander.)

—they were all written items and they were studied over by me so that I could recite them to the various stockholders as absolute facts and if they were anything that we couldn't have the original of, there were photostatic copies made so we could have them with us to show to the stockholders. I was not given a complete list of the Monolith stockholders. I think we had a list of the stockholders in the office. If I was working in Los Angeles, we had a list of the Los Angeles stockholders in a certain section of the city. I believe Mr. Shaw or Mr. Griffith presented that list to me. In the majority of the cases, when I approached a stockholder, I collected the amount of money they could afford to put up at the moment or wanted to put up at that moment. The money was brought back into the office and given to Mr. Shaw. I worked for that committee from about August or September 1932 to December 1935. I was not a stockholder in the Monolith Corporation, the Midwest or the other. I did not own stock in either one of them.

After the death of Mr. Harding, I believe there was some re-arrangement of the officers there and I was made secretary of the committee. It was two or three or four months after I began to work, in August or September of 1932. I owned no stock in the corporation at that time. I can only say that as I recollect it that Mr. Shaw made me secretary of the committee. I don't know who did, but Mr. Shaw informed me I was secretary. My duties as

(Testimony of Milton G. Alexander.)

secretary merely were to sign documents. We did have some meetings. The documents that I was supposed to sign were presented to us at the meeting or we made them up in the minutes. I don't recall exactly how that went. They were generally presented to me in the office. Mr. Morgan and Mr. La Grange right at the beginning there, and myself and Mr. Shaw, we were always in the meetings together whenever they had any. I believe my compensation for collecting the 50 cents from the stockholders for each share of stock was, at the beginning, 30 per cent. The only thing I received was the commission on the amount of money that I collecter from the stockholders. I received nothing for being secretary.

After the suit was completed, Mr. Shaw—I believe it was Mr. Shaw, gave me a bonus block of stock for collecting considerable funds for the Company. I believe it was the Midwest Company. The number of shares is beyond my recollection. I am pretty certain, 400 shares. I had been working for the company about three years at that time. I don't ever recall having physical possession of the stock certificates, that is, to take them out of the office. They were in the office. The certificates were made out to me, I am pretty certain. They were in the safe.

The first time that I heard anything about the mining enterprise, was somewhere just prior or just after the lawsuit. Frank S. Tyler was not in



(Testimony of Milton G. Alexander.)

California when I came here in June 1932. I was here about a year and a half before he was here. I can only recall the start of the mining enterprise. It was shortly after the Monolith lawsuit was completed.

Later I began working for this gold mining enterprise known as the Tyler agreement. I was working on the Tyler agreement toward the end of 1934. I remember calling upon a Mrs. Mary Craig in the latter part of '34. Mr. Tyler was in California when I began to work on this gold mining enterprise. I recall a conversation with Mr. Shaw in regard to this gold mining enterprise, in regard to my going to work for it. That conversation took place in the new offices of the Banks-Huntley Building, 634 South Spring Street. I don't recollect if anybody else was present. It was approximately in the latter part of '34. He informed me that there was information regarding some gold mining property up here up north there and that it might be possible for me to make some money on that deal. It was more or less relative to the transfer of the Monolith stock to the mining venture, because after the period of the stockholders committees' suit against Coy Burnett and other defendants, Coy Burnett was still at the helm of the Monolith Company, and we didn't feel that possibly that would be the right place for the stockholders to be. I believe Mr. Morgan was in operation as well at the time and I guess it was a period of 30 to 60 days before we went out

(Testimony of Milton G. Alexander.)

on the road. Several conversations were held and the substance of it is very vague in my mind. It doesn't occur to me that I worked for the gold mining enterprise. I was working for the committee. I was working, to a certain degree, in the interests of it, but mostly to the interests of the committee. I received pay on commission on the committee and then I also received what I might call a dole from Mr. Shaw for doing some favors for him, and it seemed like later on on the gold mining venture there was some commission of some kind in there. I can't tell you definitely, because I don't have that at my fingertips. Most of my instructions were given to me by Mr. Shaw. I don't recollect whether I went out first on this Tyler agreement alone or whether Mr. Tyler went with me. But I know my duty when I was on the road was to explain to the stockholders that were on the committee just what we had done—what we had accomplished—for the stockholders through a lawsuit. I believe we sued for several hundred thousand dollars and got something like \$280,000 back for them through various funds.

It was to go out and explain our accomplishments to the stockholders, and then to tell them about this mining venture that we planned on taking the stockholders in with us on a partnership agreement with Tyler. At the time I first went out, I had with me what is known as the Tyler agreement. At that time I was personally acquainted with a large number of the Monolith stockholders. I had called upon,

(Testimony of Milton G. Alexander.)

I would judge, about 2500. In regard to the gold mining enterprise, I called upon the stockholders that I had previously called on and knew. At the time that I went out, I took with me a document known as the Tyler agreement. It was either at this period or later on that I did that. I know I had it in my possession at one or two times. In most cases, I believe I read it to the Monolith stockholders.

(Plaintiff's Exhibit 6—A copy of the Tyler Agreement introduced.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 6.")

At the time I took this Tyler agreement out, there were Monolith stockholders who had signed this Tyler agreement. Mr. Morgan's name was on it, and at that time I had transferred the stock that Mr. Shaw gave me into the Consolidated Mines of California and my name was on it. I began to go out and work for the Tyler agreement, or the gold mining enterprise about March 15, 1934.

When I went out on the road to visit these stockholders of the Monolith, Mr. Shaw gave me instructions. I remember calling upon Mary Craig and her husband, William L. Craig. The conversation that I had with them is about the same as I had with everybody else. It was a general sales talk that I made to all. I believe I was alone on the first visit,

(Testimony of Milton G. Alexander.)

and I believe Mr. Tyler was with me on a second visit. The first visit and the second visit were from 60 to 90 days apart. I know that shortly after Mr. Tyler came to California he went directly up to the mines and lived up there in Jackson. I went to Mr. and Mrs. Craig and explained to them that we were on the right track. In other words, we had accomplished something for the shareholders and we were very much interested in keeping together and continuing on.

I reviewed the entire status of the situation from the time we started until we completed the lawsuit, and then explained to them that we had taken over a mine up in Jackson or Calaveras County, and a good number of the shareholders were turning in their stock for a certain value, that value to be applied against the purchase price of stock in this mining venture, and also explained to them that several of the stockholders had done that, that I had done it with the four hundred shares I had, and that Mr. Morgan had done it with the shares that he had, and suggested that they do the same thing, I believe. If that Tyler agreement was in my possession on that day, I either showed it to Mrs. Craig or read it to her. I read to any stockholder that we had, because, as I recollect, they had to sign that Tyler agreement, the partnership agreement, and that was in a long form, and on the back of the Tyler agreement there were several pages of lines about triple spaced which every shareholder

(Testimony of Milton G. Alexander.)

had to sign to make them a party of the agreement, together with the number of shares they turned in and, if any cash, how much. When I approached a shareholder who wished to make the transfer from the Monolith Corporation over to the gold mining enterprise, I would have them sign on the Tyler agreement.

I called on the Craigs towards the latter part of September or October of 1934.

I signed my Monolith stock about the 15th of March, 1934. It is my recollection that from that date on that I carried the Tyler agreement with me when I visited these shareholders. When I did have the Tyler agreement with me, and the shares were transferred, they would sign the Tyler agreement at that time. I told these transferees what the money was going to be used for when the Monolith stock was turned into cash. I told them that we had the plans for building a mill on the property for milling, of 12 tons a day; that as soon as we could get sufficient funds together that was what we were going to do with the money; and also to develop the mine; that we were drifting a certain amount of feet a day, and that that money was going for the purpose of drifting those tunnels. I also told them how much we had drifted already. We had an expert report. We had a map of the property drawn by Sam Shaney. The map was brought out showing how far the tunnels had gone in, how far up we had driven the tunnels or drifts, and showed

(Testimony of Milton G. Alexander.)

them the width of the vein, the various points. And we had an assayer's report showing the value of the ore. That information was given to me by Mr. Shaw. I recollect telling the people approximately how much a mill like that would cost. It seems faint in my mind that we did have a figure; that we were going out to collect to put the mill and mine in operation. I did have a conversation with the Craigs as to how rich that gold mine was, just like I had with anybody else. That information was taken directly from documentary evidence that I had in my pocket. It showed assays.

I stated this morning after Mr. Harding's death that I became secretary of the Monolith committee. Mr. Harding was one of the officers of the committee. I don't know whether Mr. Harding was a member of the committee or not, because it was just shortly after I came on to the committee that Mr. Harding deceased. After I became secretary of the committee, when there were any documents or things of that nature I would sign myself, and I believe Mr. Griffith was on it at the time, too. The documents that I signed as secretary of the committee—I think it was only myself signed. I don't believe I ever was a director of the committee. As far as I know I was only secretary. However, I did sit in the stated meetings and at those meetings I remember Mr. La Grange was there and myself, Mr. Griffith, and Mr. Shaw. At the time I made this

(Testimony of Milton G. Alexander.)

switch of my Monolith stock into the gold mining stock, I paid no cash of my own, but I believe there was some cash put up for me by Mr. Shaw. I have no recollection of the definite amount. On my first visit with Mrs. Craig, I remember making statements to her in regard to the value of the mine; whether there was so much ore blocked out. I remember very distinctly making those remarks to most every stockholder that I called upon. There was several hundred thousand dollars' worth blocked out. That figure was amassed by the certain number of tons of ore that was in the mine and the assay of it that we received from the various assayers offices, and those figures were figured out by myself. Those reports were acquired by the office—the reports were made out by Sam Shaney and Rita Sampson, and the assays I couldn't tell you who they were made out by, but it only took a matter of arithmetic to multiply the value per ton by the amount of tons. I believe it was either Mr. Morgan or Mr. Shaw who gave me those documents. I don't believe there is a stockholder that I called on that didn't mention something about dividends, so I guess Mrs. Craig did too. I recall mentioning to her that providing we could mill 12 tons of ore a day over a period of time, we figured out how much per ton that would be and figured out how long it would take to pay off the mill and the mine and the operation of it, and then after that I believed in my opinion that we would pay dividends. I said

(Testimony of Milton G. Alexander.)

that providing the mine panned out as we anticipated it to pan out it would take a certain length of time to pay off the mine or to get even with the boards again and from then on it looked like it might be eight months to a year. I don't recall if anything was said to Mrs. Craig in regard to the value of the mill run ore that they were taking out of the mine at that time. I explained to all of the stockholders and Mrs. Craig included that it was necessary to take a certain amount of country rock out in order to catch the vein unless the vein happened to be the full width necessary for the tunnel which should be approximately three or three and a half feet, maybe four. There might have been as many as a thousand of these shareholders of the Monolith that I contacted and talked to in behalf of this gold mining enterprise. I was working on the gold mining enterprise about 18 to 20 months. I have no idea how many shares of gold mining stock I traded. The Monolith preferred, I believe, was at that time somewhere around two to four dollars. I really couldn't tell how many shares I took in in total value. I recollect that the switching was done on a sort of a commission basis; however, while I was working both on the committee during the period of idleness and also back on this mining proposition and several other different propositions, I can't remember just exactly how I was paid on each and every deal. It is likely that I was paid on a commission basis, but I can't recall the com-



(Testimony of Milton G. Alexander.)

mission. I don't recall, because I do know there were two or three different percentage commissions paid on the committee deal and then I know I went out just for sort of a nominal remuneration on some other work I did for the office, and I also recall going out on some of this stock proposition on the gold mining, it seems like, on a commission basis. I don't remember whether it was that or just a certain amount per month or per day or per week, and expenses. At the time I was working for the Monolith and the gold mining enterprise, from 1932 to 1935 December, I would imagine through that period I was paid some \$18,000 to \$20,000. That included also the expenses on the road. What I mean to say is, I had to pay my own expenses on the road which amounted to some \$85 to \$90 a week in average. I don't recall the payor of the checks that I received. It was given to me in Mr. Shaw's office, by Mr. Shaw or Mr. Morgan. I don't think Mr. Morgan gave me very many of them. I know Mr. Shaw gave me quite a few of them. When I was contacting the shoreholders, I did not mention Mr. Shaw's name. I told them their stock would be sold at the market figure, anything we could possibly get out of it, and that the proceeds from the sale of that stock would go to propagate the mining enterprise, both in wages to the miners and superintendents, and the building of a mill, and anything pertinent to the operations of the mine. I don't believe I ever said

(Testimony of Milton G. Alexander.)

anything as to whether or not any of the money would go to any of the directors or other promoters; but I did tell each and everyone emphatically that asked me if I was doing this for nothing myself, and I told them no, I was getting paid for my services. There was nothing said about the pay of anyone else that I recall. The first trip that I made out in behalf of the gold mining enterprise, I was by myself, later I went out with Mr. Tyler for several months. I would judge I contacted about three or four hundred Monolith stockholders with Mr. Tyler. Before I went out with Mr. Tyler I did have conversations with Mr. Shaw in the Banks-Huntley Building. Various people at various times were present, Mr. Shaw, Mr. Morgan, Mr. Tyler and myself. The conversations just prior to the time Mr. Tyler and I went out on the road took place a considerable amount of time after I went out on the road myself. I went out on the road alone in March of '34, and at that time Mr. Morgan and Mr. Shaw gave me instructions. Then when it come time for Mr. Tyler to go out on the road with me, at the beginning of 1935, I was instructed how to handle the situation. I was to go out and contact the stockholders and give them the information of the committee's activities; also what we had done with the Tyler agreement, and then introduce Mr. Tyler to the stockholders and he would carry from there on explaining about the mine, about the activities of the mine. These were stockholders I had contacted be-

(Testimony of Milton G. Alexander.)

fore and knew personally, while on the committee, and some also I contacted on the Tyler agreement. I don't recall telling Mrs. Craig that our activities were limited to Monolith stockholders, other than Mr. Tyler and myself making these switches from the Monolith over to the gold mining. I remember just one instance. That was a man by the name of Buroll and a team mate, Mr. Nickles. We came in and explained that we ran into this factor in the office, and it was remedied and rectified right away. I know nothing about that team. We took that up with the office. We talked to Mr. Shaw, and I think Mr. Morgan was there, and they withdrew them immediately. Whether they were authorized to go in the field or not, I don't know. Mr. Tyler was up in San Francisco with me at the time this happened, or San Jose, or some place in that section. I had no conversation with Mr. Tyler as to who put these men in the field. I had no conversation with him, as far as whether he was authorized to do it or not. We were just both of the opinion that it was the wrong thing. We were out together, and had been out together for some time. I quit working for the Monolith and the gold mining enterprise December 18 or 20, 1935. At that time I went to Detroit. At the time I made the switch of my Monolith stock over into the gold mining enterprise, I got something like 1057 shares of stock assigned to me at that time. They were kept in the office, the same as the Monolith stock was. I didn't take these back to

(Testimony of Milton G. Alexander.)

Detroit with me. I do not still own those shares of stock. They were sent to Detroit to me with instructions to sign them and send them back, and that is what I did. It seems like there was a letter accompanying them, because I wouldn't have signed them and sent them back. I don't recall who the letter was signed by. I received nothing at all for the stock. I hadn't paid anything for it. It was Bonus stock. I did not lose anything.

While out on the road I did not have an expense account. I paid my own expense from the commissions I made on the committee deal and whatever money was handed to me I paid my own expenses. I never turned the expense account in to anybody else because I was responsible for that. I received a check, I believe, every Saturday at the hotel I was going to be for a certain amount of money that was an advance on my commissions. I don't recall who would sign them, but they came from the Los Angeles office. I don't know who the payor was at all. I can't recall whether it was Monolith Stockholders Committee or Consolidated Mines of California or W. J. Morgan or W. J. Shaw. It is possible that when I called on Mr. and Mrs. Craig I took some ore along with me that I had picked up at the mine. I had been up to the mine a few times and picked up some samples. It is hard to recollect whether I had any ore with me on that occasion or not. I have been out to the mine. I never had any mining ex-

(Testimony of Milton G. Alexander.)

perience. What I knew about this mine was what information I had received from the boys up at the mine there that were operating it. They gave me a little hint there and here and common judgment and good sense made me follow it. What I told people about the mine is what I myself observed and what people who were on the premises told me about the prospects, besides the reports from the mining engineers and the assayers and so forth. I was not told to pick any samples any particular place and take along. When I went out I picked up certain things that looked likely to me and took along to show the prospects. On this dividend proposition, too, I was told very definitely not to say anything about dividends to the stockholders, make no promises whatsoever. It was very emphatically emphasized upon me that I shouldn't say anything that would be a misrepresentation. When Tyler and I started out on the road, I took a sales kit with me. They were prepared by the office. I imagine either Mr. Morgan or Mr. Shaw prepared them. They were made up of reports from the mining engineers and assayers, together with the kit that I had already had on the stockholders committee, and I kept adding to that kit as the trials and information came through, all the way from the beginning of the year 1932 when I came out to work on the job. I had that kit prepared myself. I kept it well up to date. It was a letter kit that folded up in a letter

(Testimony of Milton G. Alexander.)

size, and I would have my papers and fold them and place them loose in the two sides of the letter.

#### Cross Examination

I came out to California in 1932. I saw Mr. Shaw, my cousin's husband, at that time. He and I discussed the matter of my obtaining employment. It seems the Monolith Stockholders Protective Committee was already in existence, and that originally was formed by a man by the name of Russell Griffith. I recall meeting him down on the beach there with his wife. The Monolith Portland Cement Company had its place up near Tehachapi. Then there is the Monolith Portland Midwest in Laramie, Wyoming. That is two committees there. I am pretty certain they had the same directors. Stockholders suits in both cases were contemplated. The first suit that was tried was tried on the Monolith Portland Cement Company at Tehachapi, and after that suit was completed it seems like the stockholders in the Midwest Committee were rather put out because they didn't receive direct benefits from that suit. So they wanted their own suit. The finances of the committee were pretty well expended at that time. Just how that went, I don't know. I think Haight, Trippett & Syverson were the attorneys on the Monolith Portland Cement suit. It seems like Mr. Shaw, or the committee, brought some kind of a suit against that law firm for re-

(Testimony of Milton G. Alexander.)

covery of *some kind of suit against that law firm for recovery of* some of the funds that were expended. Around \$80,000 was gotten back for the Midwest shareholders for their suit. There were various attorneys—there was Giesler, and probably Mr. George Hatfield. Also Mr. Silverberg was implicated. I remember Earl Daniels, too. I don't know which of these attorneys were sued, but I recollect something of that nature. I do remember during that period there was money obtained. It was loaned to the committee for the continuance of it, however, and it wasn't gotten from the stockholders. It seems like Mr. Shaw got ahold of it some way or other. He put up some money to keep the committee running. He was chief investigator. He dug up an awful lot of information on Coy Burnett and the Monolith Company proper that went in eventually to make up counts on the complaint, and he eventually caused the recovery of something like \$280,000 in the Monolith suit, and there was something about a four or five or six thousand dollar misappropriation of funds by Coy Burnett that he dug up. He had auditors Lybrand, Ross Bros. & Montgomery employed. I remember him guaranteeing the bills of Lybrand, Ross Bros. & Montgomery, amounting to several thousand dollars; I imagine ten or twelve thousand dollars. Then there was another firm of auditors, too, that came a little bit later than that. Thomas & Moore, I believe it was.

(Testimony of Milton G. Alexander.)

I was introduced to Mr. Griffith down on the beach on a couple of occasions. I can't remember whether it was Mr. Griffith or Mr. Shaw that hired me. Mr. Shaw was chief investigator for the committee. There was some trouble there. Shortly after I came here to work for the committee there was a shake-up in the committee, and it seems like Shaw took over the operation from Griffith. I interviewed about 2500 stockholders, and about a thousand when I started in on the new deal. I have talked to all of the stockholders in the same manner, and the faint recollections that I have of those past years have come back to that extent. At the moment I got into California, I got into the committee through Mr. Shaw. Who hired me is problematical; I don't know. I am still a little indefinite as to where the checks came from. It seems that I was paid by the committee. There was some kind of a suit instituted and tried before, I believe, Judge Shinn, and at that time I recollected and read very distinctly what the case was. You will find my statement there under oath. That case was a matter between the committee and A. R. Griffith. I am not certain of that. I am pretty certain that the one that was tried before Judge Shinn was to recover \$1,280,000 against Burnett and others. I obtained quite a number of subscriptions for the committee to bring this lawsuit against Burnett and others. I believe I received the majority of them. A good share of the money collected went for attorneys' fees, and a



(Testimony of Milton G. Alexander.)

great portion of it went for payments on the auditor's fees, and a good portion of it went to myself and the other collectors of the funds, office expenses. The stockholders got some back. After the suit they returned some funds. 85 percent of the money they had advanced sounds like the figure. They recovered judgment in that suit about the latter part of '33. After that I waited around for quite awhile wanting something to do, and I kept hitting Mr. Shaw for another deal to go out on, and he told me that he had two or three or four in the fire, that he didn't know what he was going to do, but stick around. This gold mining deal came up eventually. The Tyler partnership agreement was first made up just prior to the time I went out on the road, February or March of '34. To begin with Mr. Morgan, Mr. Wikoff, Mr. Marquis, and myself signed up. I think Edna Shaw was on it. That is Mr. Shaw's wife and my cousin. She must have had some stock. I don't think my other cousin, Mrs. Tyler had any. I don't think Mrs. Morgan had any. It was Mr. Morgan—he had some 800 or 900 shares of stock, besides, it seems like, a check for \$1,057. It seems like I had a photostatic copy of that check. It was the natural way to show the stockholders how to come into it, a sales point. Mr. Morgan was in the office at the time I received a copy of that check. I think he is the man that handed it to me. Mr. Morgan owned the Maricopa

(Testimony of Milton G. Alexander.)

mines at one time, and he was supposed to be the mining man that was familiar with mines. We discussed mining considerably, Mr. Morgan and I. Sam Chaney and Reed Sampson were the engineers whose reports I had. Reed Sampson was a state mining engineer at that time. I suppose the matter of this mine was submitted to them for investigation and report, because we got reports from him on it. I made a trip to the mine with Mr. Sampson. I was on the road two days with Mr. Sampson. We went up there and he had some other State work to do on that trip and I remember stopping at the Whisky Mine on the way back. What his duties were at that moment, I couldn't tell you. I didn't go up with Mr. Chaney, but I know he went up there on two or three different occasions right at the beginning. I believe he went up before Reed Sampson went up. I know he made one and possibly two reports. In fact, he was the man who drew up a map of the property. Those reports were explained to me by him and Morgan and Shaw. We all went over them together; Tyler. Right about that time Shaw took sick and went to the hospital. He was sick for an enormous long time. He conducted the business from a phone in his room there. Whether that was the beginning of the mining proposition or afterwards I can't recollect. He always had diabetes and he had heart trouble too. He had to be in bed a lot longer than I would like to be. While he

(Testimony of Milton G. Alexander.)

was away during the mining enterprise, Mr. Morgan was in the office most all of the time so we could discuss the matter with him at that time. I explained to the stockholders what was to be done with the money that they contributed to the mining deal and with the stock that they turned in on this partnership agreement. It was going to the propagation of the mine, for operating the mine, for the building of a mill, for paying my commission or salary, for collecting the funds. I presumed the money and stock belonged to the partnership. Exhibit 6 is the partnership agreement made and entered into as of the 6th day of February 1934, between Frank S. Tyler of Detroit, Michigan. I knew him back in Michigan. Mr. Tyler mentioned to me on several different occasions, that he planned for his own benefit in the venture to raise some funds from some friends back in the Detroit area. I undoubtedly explained the agreement to the stockholders. The funds were supposed to go for developing the mine and putting up the mill and so forth. There was a mill of that sort built on the premises, and there was considerable development work that was done there. Several hundred feet of tunnel was drifted. I think there was three or four or five men working there. There was a stope drifted. I don't know how many feet of that. I know it went up quite a ways to reach another vein that was some several hundred feet above. I know Mr. Tyler never

(Testimony of Milton G. Alexander.)

raised the funds that he thought he could raise. I do know that Tyler told me that he could get some funds in Detroit and I know that finally he couldn't get them. I don't know anything about what happened from the time I left California until I got back. My recollection is that as we went out and tried to get these stockholders to come into the partnership agreement we also at the same time told them that should we get sufficient funds in, we would incorporate. We got 250 or 300 stockholders into the partnership agreement. Maybe I am way off on it. It seems like it was put into a corporation about the middle of '35. I don't recall having anything to do with it. I don't recall having anything to do with obtaining any stock from the stockholders to exchange for stock of the Consolidated mines. I might have. I became a member and secretary of the Monolith stockholders protective committee. Mr. Shaw advanced me moneys from time to time so that I owed him an accumulation. In talking to the various stockholders in making this solicitation, I don't ever recollect mentioning Mr. Shaw's name. I don't know if Mr. Shaw had any stock in the Monolith himself, but I think his wife did. I am pretty certain she signed up. I recall her signature on the partnership agreement. Buroll and Nickles went to some town north and consummated a deal with some shareholders and very shortly after that Mr. Tyler and I called on that individual stock-

(Testimony of Milton G. Alexander.)

holder and his wife and found out that the stock had already been picked up for the mining stock and we immediately got in touch with the Los Angeles office and there was no more trouble after that.

Regarding the settlement of the lawsuit against the Monolith's officers; I know that we got a judgment for, my recollection is \$1,280,000, or \$1,820,000. (Stipulated to be \$820,000). Well, Lybrand, Ross Bros. & Montgomery I believe it was made out checks to the various shareholders for a refund of a certain portion of the money that was paid into the committee for the propagation of that suit. That money went directly to the stockholders; I am pretty certain of that. I don't recall how much it was. The stock value was enhanced considerably. I believe the Monolith preferred at that time was down to about a dollar a share and eventually went to three or four almost immediately after the suit. The common stock quoted before the suit around six bits and went to a dollar and a half immediately. At the time I went out to gather stock for the mining deal, there was no open market whatsoever for it. The stockholders apparently were not satisfied to go ahead and remain stockholders in the Monolith Cement Company. Some of them, and others were—but they were very well disgruntled with the fact that Mr. Burnett was still at the head of the company. We tried to get him out through the suit and we

(Testimony of Milton G. Alexander.)

could not do that. So they were dissatisfied to see him still at the head of the company. I went around with Mr. Tyler to introduce him and have him explain his situation with respect to the proposition. He explained what the mining venture amounted to as far as the values of the assays and so forth, and what the plan was of getting into the mining venture and getting away from the Monolith. I believe the settlement was complete and the Monolith stockholders committee working at the time I started in on the new venture, but possibly the Midwest was not complete. I believe I collected most of the funds for the stockholders committee. It is possible I collected most of the stockholders' signatures to the Tyler partnership agreement. Tyler and I worked together. After seeing a list of names, I recollect rather distinctly of getting these signatures all alone without Tyler's assistance. I couldn't tell you whether Mr. Morgan got any or not. I know a lot of these names are very, very familiar to me. Mr. Tyler and I were on the road about three months. We went all over the state. I don't recollect once of crossing the border.

#### Redirect Examination

I don't know how much money was paid Mr. Shaw as an investigator. I did not sign the checks that he was paid, to my recollection. I don't recollect, if, as secretary of the committee, I signed checks. I don't recollect being on the bank account.

(Testimony of Milton G. Alexander.)

I don't believe, among my duties, was included paying checks *wither* alone or with anybody. I went back to Detroit in December 1935, and had no more connection then officially with the committee or with the gold mining enterprise. I do not know how much stock was traded or sold in '36 or '37 in this gold mining enterprise. I don't know anything about it. It seems like it was a commission I received for the stock Buroll and Nickles traded. I received some money for the deal. In my opinion Mr. Shaw owed me money toward the end. It is beyond my knowledge whether whatever stock was sold under this Tyler agreement, that money and stock went to Mr. Tyler. I know we sent it into the office. Mr. Tyler was with me at that time. The money and stock that we collected then at that time, we generally sent it to the Los Angeles office if we were out on the road for any period of time. Mr. Shaw and Mr. Morgan were in the office in Los Angeles at that time.

## GARFIELD VOGET, .

a witness for the Government, testified as follows:

## Direct Examination

I live at Hubbard, Oregon. I am a creamery operator. I was living there back in 1932 and 1933. I was a stockholder in the Monolith Portland Cement Company. I had 100 shares of common and 600 shares of preferred Midwest. I deposited my Monolith Portland Cement stock with the Pacific National Bank of San Francisco, and received in exchange deposit certificates. The mining enterprise first came to my attention in the latter part of 1933 or the first part of 1934. I believe I got a letter from Mr. Morgan stating that he would advise to exchange the certificates for a mining deal that seemed to look very good to the committee and would, in his opinion, assure the members of the committee to receive back their money that they had invested in Midwest and Monolith about a hundred percent in time to come. Mr. Alexander called on me in 1934—about October 10, 1934. We had a conversation. No one else was present besides Mr. Alexander and I. I told Mr. Alexander that I did not have much faith in exchanging the stock, but he stated the case in such a manner and finally said, "I will tell you that before another year we will pay you at least \$200 in dividends." And I told him then, "How in the world can you tell?" I said, "You can't tell what will happen in a year from now."



(Testimony of Garfield Voget.)

He said, "Well, what do you want to bet?"

I said, "I am not a betting man and I am not going to bet."

"Well, will you shake hands on it?"

I said, "Surely."

He was standing downstairs and he reached over the bannister and we shook hands, but I want you to understand I did not exchange my shares that day nor that year. I thought he was honest. I received a letter from Mr. Morgan several years ago asking for 50 cents a share to be paid to the Monolith Committee, but I withheld and did not pay any money until Mr. Alexander called, and then I had to pay them \$350. I believe I sent a small check down to Mr. Morgan prior to this, and then \$127.50 completed my payment, and that was at the same meeting where I didn't exchange the shares, but I paid my obligation to the committee. (Examining document) I didn't read it, so I will have to retract. I paid in \$200 to the Tyler agreement.

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(The document referred to was received in evidence and marked

"GOVERNMENT'S EXHIBIT No. 7.")

(Read by Mr. Norcop)

"October 10, 1934

"Received of Garfield Voget, none shares of Monolith preferred stock and \$200 to be applied

(Testimony of Garfield Voget.)

on the Frank S. Tyler agreement in accordance with the terms and conditions, a signed copy of which is to be properly executed in my name, if, as and when the mutual agreement is finally accepted.

“Frank S. Tyler and Associates,  
“By (Signed) M. G. Alexander.”

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The next was I received a letter from—(pause) (Examining document) June 12, 1935. I recall receiving that letter. I received a letter on the printed form of Monolith Stockholders Committee, 634 South Spring Street, Los Angeles, California, dated July 3, 1935, that came through the mails. I received another letter on the stationery of Consolidated Mines of California, the same address, giving a telephone number in Los Angeles, dated July 12, 1935, and I received another letter here. (Examining document). This is a letter which has at the top July 16, '35. That is a carbon copy of a letter I addressed to the addressee appearing at the top of the letter. I received another letter on the stationery of the Consolidated Mines of California, bearing date July 23, 1935. And another letter on the Consolidated Mines of California stationery bearing date August 24, 1936. I received a letter in handwriting on the stationery of the Hotel Hayward, which has in handwriting—that is Los Angeles—which has in handwriting, “March 8, '37,”

(Testimony of Garfield Voget.)

and another letter dated July 1, 1937, and still another one on the same stationery dated September 1, 1937.

When Mr. Alexander asked me for the \$200, I told him, "What is the reason that you have for of more money?"

He said, "We have a man came from the East whose name is Mr. Tyler who has a very good mine and who has agreed to chip in with the stockholder committee and for his services and for completing the mine so that it could profitably be operated and agreed to take some of the Midwest and Monolith stock." I asked him what the stock was worth, and as far as I can remember he told me that the Portland Cement stock was only worth 75 cents and that the other was \$1.25. I asked him how much money it would take and he said it would take between \$15,000 to \$20,000 at the very most because some machinery was already on the ground. And I asked him about the value of the mine and he told me according to the assays that they thought that the mine was at least worth, putting it low, \$200,000. He stated that there would be no salaries paid to any of the officers until the mine would be in production.

(Letter of July 12, 1935 received in evidence as Government's Exhibit No. 8—subject to reserved Motion to Strike).

(Letter of July 3, 1935 marked for Identification as Exhibit No. 9).

(Testimony of Garfield Voget.)

(Letter of July 12, 1935 received as  
GOVERNMENT'S EXHIBIT No. 10  
subject to reserved Motion to Strike).

(Read by Mr. Norcop)

“Consolidated Mines of California. 634  
South Spring Street. Telephone Trinity 9606.  
Los Angeles, California. July 12, 1935. Mr.  
Garfield Voget, Hubbard, Oregon.

“Dear Mr. Voget:

“We have been looking forward to the time  
when we could send you such a gratifying re-  
port as we are now able to do, as a result of a  
day and night crew working on your property  
for 16 months.

“Although our engineer stated six months  
ago that we had developed sufficient ore of a  
value that would warrant the building of a mill,  
we thought it good business to continue our  
development work; and we are happy that we  
waited until now to complete the erection of  
our mill because the quality of ore being devel-  
oped at the present time will materially change  
the type and size of the mill required.

“Development work on the McKisson Mine,  
has progressed along the following lines, and is  
compiled from our engineer's reports:

The Upper Tunnel has been driven 707 feet.  
Our Engineer reports that three main shoots of  
ore have been developed. One of these is 80

(Testimony of Garfield Voget.)

feet long; another 100 feet long and the third is approximately 130 feet long. In addition there are two other lenses 30 and 50 feet respectively. While these constitute the showing on the level it is believed that this entire area is in an ore zone.

“Samples in the stope on the 100 foot shoot indicate a value of approximately \$23.00 (eliminating high assays) while the general dump samples gave \$25.90 per ton. However, we recently shipped some 33 tons of this same ore to the smelter and it showed a gross of \$37.26 per ton.

“The 80 foot shoot mentioned above has been stoped above the level with a reported yield in the mill of approximately \$27.20 per ton. The 100 foot shoot shows value of \$38.00.

“The Ditch Tunnel, 158 feet below the Upper Tunnel, has been driven easterly some 760 feet. A more or less continuous ore shoot—some 300 feet long has been developed on this level, the average value of which (eliminating the very high samples) is about \$18.00 per ton.

“A raise was driven at station 476 from the Ditch Tunnel to the Upper Tunnel and samples showed an average value of \$38.53. After the completion of the raise, work was resumed at station 621 in the Ditch Tunnel—The Menedue shoot being the objective. This tunnel has now been driven 760 feet. After passing station 621

(Testimony of Garfield Voget.)

a very fine ore body 125 feet long has been developed at this level with an average value of \$31.83 per ton and we have not reached the limit of this shoot.

“The ore developed at 621 feet on, is an un-oxidized ore, running very heavy in sulphides and shot through with considerable free gold. We believe we are entering the Menedue shoot, which is the main one, that we have been endeavoring to locate from the beginning of our development work. The last samples taken on this level assayed \$63.00 and \$74.00 per ton.

“Considering the fact that we could have shown a good profit on an average of \$10.00 per ton ore, due to our low costs of milling, we consider this report very gratifying, owing to the much higher ore values than we ever expected.

“Our attorney, Honorable George J. Hatfield, has just completed our corporation in every detail and our Mr. Frank S. Tyler will have our certificates issued to each of us, very soon, as our partnership interest appears. There is only one class of stock, which has full voting rights and is non-assessable.

“The officers selected to head your enterprise are: Henry L. Wikoff, President; W. J. Morgan, Executive Vice-President; Frank S. Tyler, Secretary-Treasurer and L. D. Gilbert, Engineer and Superintendent of Mines.

(Testimony of Garfield Voget.)

“The small group of partners who started this enterprise own all the shares and at this time, it is not intended to do any public financing for we do not feel that this is necessary.

“Please feel assured that we will keep you advised as to developments, and we hope to have more great news for you as work progresses. In the meantime, we trust you will continue to give us your loyal support.

“Yours very truly,

“CONSOLIDATED MINES OF  
CALIFORNIA”

“By: W. J. Morgan (signed)

“Executive Vice-President

“HLW:S.”

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—indicating “HLW” as the dictater and “S” as the receiver. This is a processed letter. It is either multigraphed or mimeographed. I don’t know which, and the name is filled in at the top and the address. The signature, however, appears to be handwritten, I think that it is. It may be a very clever reproduction, but it looks like it is handwritten.

I meant to offer with this letter, if the Court please, the envelope.

(By the Witness)

I received the letter which is Exhibit 10 in the envelope that is attached to it.

(Testimony of Garfield Voget.)

(By Mr. Norcop)

The envelope is a Los Angeles cancellation date of June 13th. The letter is June 12th. The cancellation date in Los Angeles is June 13th, 3:30 P. M., 1935, and one of our California Pacific International Exposition stamps is on there, so that was about the time we were advertising the Exposition.

(By the Witness)

I believe I got a letter from Mr. Tyler to exchange my Midwest stock for Consolidated. Either that or he called me up. I know Mr. Tyler called me up over long distance, and wanted me to exchange, and said that this was about my last opportunity to exchange my Midwest Portland Cement stock for Consolidated Mines. I told Mr. Tyler either that same evening or the next morning that I did not like to be rushed. I answered him by letter. That is my letter.



(Testimony of Garfield Voget.)

(Received in evidence as

GOVERNMENT'S EXHIBIT No. 11

Subject to reserved Motion to Strike).

(Read by Mr. Norcop)

Hubbard, Ore July 16-35

“Mr. Frank S. Tyler,

“Los Angeles, Calif.

“Dear Sir:

“Your phone call was quite a surprise. It is certainly asked too much for one to make up his mind in such a second of time. My wife is partners in the shares of Monolith Midwest and she will not give her consent unless we have something more definite.

“Where is the mine located, what is the cost per ton of mining, will water interfere in the shafts, will expensive pumping to be done, how many shares are issued and for how many shares is the Co. incorporated for, how far is it to R Road or Smelter, what is the expense shipping it there? And many other questions, such as you would want to know, when you make a deal of this kind.

“Mr. Morgan states in his letter that we have a good chance to recover the full amount of the shares with 7% interest, it seems to me that a decision should be rendered in the near future, as it has been filed with the Court.

(Testimony of Garfield Voget.)

“Wife and I want to have some assurance that we do not get a worthless proposition and are out of our Midwest entirely. I have paid my part to the Stockholders Committee and your new proposition certainly raises the doubt with us, if it must be done in a hurry, or we be out. Do you think that is fair. Why did you not write another letter about the mine, with the one you sent, this is the first that I knew about you having a mine, unless that Mr. Alexander mentioned it when he was here a year ago.

“Now in all fairness to us, please give us a clear outline, description and location of mine, if it is on a lease royalty basis, or if and how much ground that we owe.”

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(By the Witness)

I signed the letter and sent the original of that through the mails to Mr. Tyler.

(Testimony of Garfield Voget.)

(Letter dated July 23, 1935 received in evidence as

GOVERNMENT'S EXHIBIT No. 12  
subject to Motion to Strike).

(Read by Mr. Norcop)

“July 23, 1935.

“Mr. Garfield Voget,

“Hubbard, Oregon.

“Dear Mr. Voget:

“In reply to your letter of July 16”—and that is the letter (exhibiting)—“I am pleased to give you the following information.

“The mine is located 21 miles east of Jackson, Calaveras County, California. We have an unlimited supply of water running directly in front of the entrance to the tunnel, making our pumping costs practically negligible. The only water encountered in the tunnel is normal seepage, which drains out.

“The Consolidated Mines of California was incorporated for 1,000,000 shares of No Par Value stock. At the present time 150,000 shares have been authorized for issuance with no Treasury Stock for sale.

“The mill will be located directly below the water supply and as the paved State road runs within one mile of the millsite, trucking of the concentrates may be done with the utmost fa-

(Testimony of Garfield Voget.)

cility. Contracts are now being let for the building of the mill, and it is contemplated that we should be in production about September 15.

“For the past 16 months we have been running a day and night shift, developing ore. Our engineers report that we now have enough ore blocked out to justify the erection of the mill with assurance that we have sufficient ore for continuous operation.

“Our assays show that the value of the ore we have developed is much higher than we had anticipated. An average taken of several hundred assays runs in the neighborhood of \$35.00.

“A carload of ore sent to the smelter at Selby gave us a return of \$37.26 per ton, as the enclosed photostatic copy of the smelter report shows.

“I delayed answering your letter until I could check with Mr. Alexander regarding the original transaction with you. He advises me that through him you turned in one hundred (100) shares of Monolith Portland Cement Company Common stock and I am now preparing to issue to you one hundred forty (140) shares of Consolidated Mines stock as a result of this transaction.

“In offering to accept your 600 shares of Midwest stock in exchange for 600 shares of

(Testimony of Garfield Voget.)

Consolidated Mines, I am making to you the identical proposition which I have made to the original partners in this enterprise. At the present time I must restrict this offer to my original partners, only, for the reason that there is a market for only a limited number of shares of the *Monolith Portland Midwest* stock and my only reason for asking an early decision is that I was fortunate enough to find a place for the *Midwest* owned by the people who went in with me originally; but I do not know, at this time, that I could handly any from anyone else.

“I appreciate the fact that you have paid your part to the Stockholders Committee for the *Midwest* litigation. The complaint on the *Midwest* suit has been filed and I have no reason to believe that ultimate recovery could not be made. However, as in all matters of this type, the element of time is all important and unquestionably it will take quite a while for this matter to be finally determined. In the meantime my reports from the mine have been sufficiently encouraging to me to say to you that I feel that the transfer would be an advantageous one from the standpoint of your wife and yourself and I am so advising you. I base this on the fact that conditions at the properties of the *Consolidated Mines* have progressed far more favorably than we originally anticipated,

(Testimony of Garfield Voget.)

and it seems to me that you have a greater assurance of return on your investment, and it is my personal opinion that there is not as much risk involved.

“Both Mr. Morgan and I wish you to feel that there has been no negligence on the part of the committee in the prosecution of the suit; but as stated above, in all fairness, I must say that from my standpoint, I feel that the Consolidated is a much better place for funds at this time.

“Because of the limitation of my market on Midwest, I must request an early decision as the market on Midwest may go considerably *lowe*. I therefore ask that, should you decide to accept this proposition, you immediately wire me at my expense, at 634 South Spring Street, Los Angeles, confirming the fact that you will send your Midwest to me, and I in turn will hold for your account 600 shares of Consolidated Mines. I will then ask that you endorse the certificate in blank, by yourself and your wife, if it is made out in both names, have your signature guaranteed by the bank, and then send the *cretificate* to me by Air Mail, Special Delivery.

“Unfortunately we are compelled to handle this transaction at a long distance; but I want you to know, on behalf of Mr. Morgan and Myself, that it is our sincere desire to protect

(Testimony of Garfield Voget.)

your interest just the same as if you were able to come to our office every day. We will leave nothing undone to attempt to make the Consolidated Mines of California a success, which we feel that it can be.

“Awaiting your immediate reply, I am,

“Very sincerely,

“Frank S. Tyler (signed)

“FST:S.”

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Then contained with the letter is a photostatic copy of a smelting report by the American Smelting & Refining Company, Selby Smelting Works, 405 Montgomery Street, San Francisco, California.

This report shows “Received of The McKission Mine, Mokelumne Hill, California,” giving the lot number and the date of its arrival, being December 28, 1934, showing the check having been issued by the smelter to F. S. Tyler, 634 South Spring Street, Los Angeles, California, and showing that the sacks in bulk weighed 66,340 pounds, moisture 3.1 percent, making a total of 2,057 pounds, showing dry weight, subtracting the moisture from the gross, showing net dry weight of 64,283.

Then it goes on to show the percentages and prices and the credits, and it says “Value of 64,283 pounds”—that is the total net—“at 30.53 per ton, \$981.28.”

(Testimony of Garfield Voget.)

Then there is a deduction for the bank's bill for supervision and unloading truck showing the net proceeds to be \$958.71.

I have omitted a few figures there, Judge Montgomery. I don't believe they are necessary.

The envelope shows two 3-cent stamps, a special delivery. It went airmail special delivery, and that was cancelled in Los Angeles on July 23rd, the same date as the letter.

(Letter dated August 24, 1936 received in evidence as

GOVERNMENT'S EXHIBIT No. 13  
subject to Motion to Strike)

(Read by Mr. Norcop)

“Aug. 24th, 1936.

“Dear Mr. Voget:

“Please pardon the delay in answering your letter dated Aug. 14th. My correspondence has been so voluminous that I am just beginning to see daylight.

“The mining company was organized by a number of the stockholders who are members of the committee. All participated as individual investors. My identification on the Board of Directors and in the capacity of Executive Vice President, I feel has been beneficial to the



(Testimony of Garfield Voget.)

stockholders that became interested. We have never sold or offered any of the Treasury stock, the entire 550,000 shares are still in the Treasury.

“There has been some delays in operation, and obstacles to overcome, that are usually prevalent in any new undertaking of this nature, but we hope and believe they are behind us. Last month the returns were about \$1500.00 above the operating expenses, and if we can maintain that schedule, or better, as our Engineers feel that we can; the investment should be profitable to the shareholders.

“Larger capacity air machinery was installed last month, and several other changes effected.

“When anything develops that will be of interest, I will be glad to communicate it to you.

“Very truly yours,

“W. J. Morgan (signed)

“Executive Vice President

“WJM-r.”

(Testimony of Garfield Voget.)

(Letter dated March 8, 1937 was marked  
GOVERNMENT'S EXHIBIT No. 14  
for identification only).

(Letter dated July 1, 1937 received as Gov-  
ernment's Exhibit No. 15—subject to Motion  
to Strike).

(Letter dated September 1, 1937 received as  
Government's Exhibit No. 16).

(By the Witness)

Mr. Tyler visited me in March of 1936—I believe it was the 24th day of March. He came alone. He and I had a conversation about this mining enterprise. No one else was there besides he and I. It was in my place of business. Mr. Tyler spoke very highly of the mine and my answer was that I was very much surprised seeing him and him asking me to make an exchange for my Monolith stock because it was nine months ago when he called me up over long distance, and I suppose I had to pay that, I told him. Then my letter followed, and his answer, and then after nine months he was still after me to exchange my stock. He left and returned in a few days. In that conversation I mentioned a quotation in my native language to him. "Das papier ist geduldig." That is German. Its translation in English is: "That paper has lots of patience." Mr. Tyler returned on the 28th of March. He had another man with him—Mr. Wahlberg. We three had

(Testimony of Garfield Voget.)

a conversation downstairs, and then after a few minutes Mr. Wahlberg asked me to come upstairs. He and I went upstairs to my private office. He said on the invitation or request of Mr. Tyler, in order to close this deal, he had come back airplane to interview me, that he was a financial adviser or commentator, and that he would never recommend making this exchange unless he knew from his own point of view that it was a sound deal. I had the 600 shares of the Midwest, Monolith Midwest that these gentlemen suggested I exchange for the gold enterprise. I signed an agreement or at least turned over my stock. They gave me an order on the stock.

(Carbon copy dated March 24, 1936 received as Government's Exhibit No. 17—subject to Motion to Strike).

I have seen a letter dated March 30, 1937, on the stationery of the Consolidated Mines of California. That letter came to me by mail. This is the envelope in which the letter was contained.

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(Letter and Envelope received in evidence as

GOVERNMENT'S EXHIBIT No. 18

over objection).

(Read by Mr. Norcop)

“Dear Mr. Voget:

“The delay in answering your letter is due to the fact that the Company is getting out an

(Testimony of Garfield Voget.)

annual report which will give you full information. This should be available in the near future; but in the meantime we want to assure you that the progress made to date is very satisfactory,

“Very truly yours,  
 “CONSOLIDATED MINES OF  
 CALIFORNIA  
 “By Frank S. Tyler, (Signed)  
 “FRANK S. TYLER,  
 Secretary.”

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And the whole letter seems to be, except for the addressee, a processed or multigraphed letter or mimeographed letter. So it doesn't mean that it was written to him personally, but just his name filled in at the top, and the envelope has the name of the company and the address, and, as I said before, the cancellation of March 31st is addressed to Mr. Garfield—oh, it is addressed to just Mr. Garfield, Hubbard, Oregon.

(By the Witness)

Mr. Alexander mentioned that Mr. Morgan gave the stock in order to get the new promotion started, or that he subscribed the stock. Mr. Alexander did not exhibit to me the Tyler partnership agreement. I can't remember Mr. Shaw's name was ever mentioned.

(Testimony of Garfield Voget.)

Cross Examination

Mr. Tyler gave me—(Pause)—it says right here (indicating document).

(Certificates of stock 691 and 697 received in evidence as Defendant's Exhibits A and B).

Since I obtained this stock, it laid around, resting in a box. I didn't try to exchange it for oil stock or anything. I tried to exchange my Midwest stock for oil stock. I did not succeed. I can't remember how much I considered my Midwest stock to be worth, nor what I offered it for. If I ever obtained any other offer than this one, I don't remember. I never gave an order to anyone down here to turn it over for oil stock or otherwise. I never received a dividend on it.

Redirect Examination

I don't remember the year I was attempting to sell my Midwest for oil stock, but it was in the early beginning of the trial, before the outcome was known.

## CHARLES WOHLBERG

a witness for the Government, testified as follows:

I have been in Utah working practically all of last year, though I still call Los Angeles, 1034 South Corcoran, my home. I have known W. J. Shaw something over 20 years. I first met Mr. Shaw in the central-west, about 1914. We were business partners in the financing of the Western Auto Supply Company about 1922 or 1923. I was associated with Mr. Shaw in that enterprise about a year. I had business dealings with him about 1935. I was engaged to collect money from stockholders of the Monolith Midwest Company to prosecute a similar lawsuit to the one that they had previously had against the Monolith Cement Company. Mr. Shaw employed me to perform that work. That was here in Los Angeles. I employed another salesman and my work in that respect was partially solicitation, to a small degree, on my own account, but largely supervising his work, for which I received a small overriding commission. We solicited funds from the Midwest stockholders to prosecute a suit against the principals of that company. There was a list of these shareholders given to me to call upon. Mr. Shaw or someone else gave me that list. At that particular time when we were soliciting funds for the committee, personally or through me we called on several hundred shareholders of the Midwest or Monolith Portland Cement. I worked for the Monolith Committee soliciting these funds about 10 to 12

(Testimony of Charles Wohlberg.)

weeks as I recall in the year of 1935. I had some contact or relation with the mining enterprise known as the Tyler agreement or the Consolidated Mines sometime in 1936. I may have heard of it a number of times even during the period that I was collecting funds for the committee, but I had no active interest in it during that period. The first active interest I had in it was some time during 1936. I did some work for the mining enterprise after the company was formed in 1936. I recall Mr. Henry Wikoff and Mr. W. J. Morgan and Mr. Tyler as directors of the mining company. I believe Mr. Morgan and Mr. Wikoff were associated with the Monolith Committee. Before I went to work for the mining company I think I discussed it generally with Mr. Morgan at length, Mr. Shaw at length, Mr. Tyler at length, and to a lesser degree perhaps with Mr. Wikoff and another gentleman—I think it was Marcovitz. I was employed to work by the committee, and I also received compensation and did work through Frank Tyler. I never worked for the mining company itself directly. At the time I was connected with the gold mining enterprise, I was actually working for the Monolith Committee. The mining company having been formed and the stock having been issued to Mr. Tyler, the members of the committee became the principal officers of the mining company. It was agreed that the committee members should be approached and the sug-

(Testimony of Charles Wohlberg.)

gestion made that they transfer their interest from the certificates of the Midwest Company to Mr. Tyler who, in turn, was to complete certain phases of the mining venture. Practically all the time when I was in the field, for the mining company, I was with Mr. Tyler. When I personally called on committee members, I brought up to date the activities of the committee, told them what the committee members felt as to the future of the Midwest Company.

I called largely on shareholders of the Midwest and told them that the heads of the committee had transferred their holdings from the Midwest or Monolith, as the case might be, to Mr. Tyler, and that naturally having done so, personally they felt that it was a good thing for others to do.

I then introduced Mr. Tyler who, in turn, gave them his opinion of the mining project. We had a list, a copy of an original partnership list with various signatures which we, in many cases, showed. That was the agreement known as the Tyler agreement. The only names on that list that would stand out in my memory at all would be the names of Mr. Morgan, Mr. Alexander, and Mrs. Edna Shaw. A copy of the agreement was not left with the shareholders. In most cases, when I called on them, I showed them a copy of the agreement with those names on it. The transfers in the main were made through Mr. Tyler. An agreement was signed whereby they agreed to transfer to Mr. Tyler their cer-



(Testimony of Charles Wohlberg.)

tificates and he, in turn, accepted that. I don't recall the exact detail, but I believe it stated that he in turn would deliver so many shares of stock, of his personally owned stock of the Consolidated Mines. At these transfers there was no money exchanged for stock through me, as I recall it. I worked in California and I made one trip to Oregon where I effected in this matter some exchanges. In Oregon I called on Mr. Voget who testified here yesterday among others. I went there alone by plane and I met Mr. Tyler there. Before I went to Oregon, conversations were had in Los Angeles with Mr. Morgan and Mr. Shaw in regard to the Oregon trip. That was in 1936. I made considerable inquiry prior to the time that I did any work, both as to these securities being exempted under the Corporate Securities Act and the Securities and Exchange Act. Mr. Shaw and I spent considerable time discussing that. Mr. Shaw and Mr. Morgan felt, as a result of conferences they had had with their attorneys, that these securities were exempted under both the Corporate Securities Act and the Securities and Exchange Act inasmuch as it was Mr. Tyler's personally owned stock. I personally felt at the time that there was no violation. When I speak of "securities" I mean the stock which Mr. Tyler owned in Consolidated Mines. I was paid by the committee and I also received some compensation from Mr. Tyler. Mr. Tyler had possession of the stocks. Mr. Tyler was with me practically all the time when I was making these exchanges.

(Testimony of Charles Wohlberg.)

Cross Examination

I have been in the securities business over 20 years. I was engaged in financing a great many companies and then went into the brokerage business here. I wrote for the Evening Herald here and various smaller magazines on some financial matters; the company had been formed, when I went out to make the exchanges. I saw a permit from the Corporation Department to issue the stock to Mr. Tyler. I don't know whether the actual issuance was completed or not. The authority to issue had been given. My understanding of the set-up is, that at the time that the permit was granted by the Securities Department of this state that Mr. Tyler received a certain number of shares of the Consolidated Mines for and in consideration of his turning over certain interests in mining properties, that he was given that as his stock in exchange for certain mining properties and, therefore, he became the owner of them. Whether or not it was actually issued on the books or not, that I can't say, but I saw an authorization to issue. It was stipulated that there was a permit from the Commissioner of Corporations to sell the stock. Within the state of California is the only place where sales were consummated. My conversation with Voget was substantially the same as others. I gave them the history of the Monolith suit and then the status of the Midwest suit up to that point. My best recollection is that we showed a balance sheet of the Mid-

(Testimony of Charles Wohlberg.)

west Company which at that time was not particularly inviting from a financial standpoint, and we stated that while the recovery had been made from the Monolith Company, that it was thought unlikely that even though a suit could be successfully prosecuted that it could be collected and that as a result the head of the committee felt they had a better opportunity to recoup their loss in entering into a mining venture than continuing their holdings in the Midwest Company. I was what you term mining-minded at the time. I believed that the mine had a chance of success. I thought it was a good speculation. I don't recall if I had the engineer's reports with me. I discussed the mine with a Mr. Sampson at some length prior to the time. I don't believe I, personally, had any maps. As a matter of fact, Mr. Tyler did most of the discussing of the details of the mine itself. I think he had engineers' reports with him. One or the other of us had a copy of the Tyler partnership agreement at the time. We simply were showing to the people those who had effected exchanges of their stock. We didn't call on people who were in the partnership. The partnership showed the names of those people who had agreed to exchange their interest in the cement company for the stock of the mining company. I gave the names of those that I recollect. (Examining document) This name seems to come to my memory, the name of Bullard. I will have to plead lack of remembrance. I did not take up the exemption of those securities with any S. E. C. man.

(Testimony of Charles Wöhlberg.)

I discussed it with Mr. Shaw and Mr. Morgan. I think Mr. Morgan felt that they were exempted.

About these particular certificates taken up into Oregon, the Vogets. The discussion came up just about in that way. I think prior to the time it was contemplated that I would make the trip to Voget, whether or not the securities were exempted, and I think it was concluded, at least it was the opinion of the people at that time, that if Tyler personally effected exchanges, that they were exempted. As I recall it, the Securities Act at that time had no bearing at all on the sale of securities within the state. It was only affected by interstate commerce. I don't know that I had any discussion with Mr. Morgan; I merely saw his signature attached to a document which stated he had transferred, and so I assumed that he had done so. I had the opinion that anything he signed was correct. I do not recall the first name on the Tyler agreement. It could well be H. S. Wikoff. His name was on it. I met Mr. Wikoff for the first time there at the office. I understood he was a retired banker, I believe, from the Central West, and that he had been a member of the stockholders committee. Mr. Morgan was present in the office of the company whenever I was there. He spent his full time there. I discussed these matters with him on a number of occasions. I understood Mr. Shaw's title was investigator for the committee. He was not a member of the committee to my knowledge. What he was actually doing, I can't answer you. Mr. Morgan knew about this mining proposition. I discussed it with him. I told these

(Testimony of Charles Wohlberg.)

various parties that I solicited what the members of the committee thought about the mining proposition. Mr. Morgan was enthused about the mine at the time, about its prospects, and that it had possibilities of becoming something. I did not find any doubt at all in any of these gentlemen connected with the committee or the mining company but what they were going to have a successful venture. I do not know of my own knowledge anything about the work that had been done on the mine at the time that I saw Mr. Voget. It was hearsay. I was not up there myself. Mr. Tyler was present when I called on Mr. Voget and Mr. Tyler made the statement to Mr. Voget as to what was being done. My statements were rather in generalities—that I thought it was a good mining company. I actually believed what I was saying. Mr. Voget had certificates of the Midwest Company that I solicited the exchange of. I don't recall any specific discussion as to the value of that stock. I don't personally have a copy of the agreement to transfer the stock to Tyler. Exhibit 17 is the one I referred to. As I recall, he had Midwest stock. It is very possible that he may have had common stock of the Monolith. We effected some exchanges of common or preferred stock of the Monolith Company, but those were isolated cases. Our main exchanges were of the preferred stock of the Midwest Company.

(Two certificates produced by Mr. Norcop, one for 600 shares of mining stock, one for 140 shares).

(Testimony of Charles Wohlberg.)

(By the witness)

My recollection would be that the 600 shares represented the preferred stock of the Midwest Company, and perhaps the 100 shares represented the common stock of the Monolith Company. I don't know whether Mr. Tyler signed this Exhibit 17 at that time. It looks like his signature. I am under the impression that all of those agreements with Mr. Voget read the same. It was my understanding that that was not within the Corporate Securities Act at that time. I have no recollection whether Mr. Tyler issued the certificates right there.

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MARIE M. D. CRAIG

a witness for the Government, testified as follows:

Direct Examination

I live at Riverdale, Fresno County. My husband's name is W. L. Craig. Mr. Craig and I owned some shares in the Monolith Cement Company. I think 68 preferred and 34 common; and in the Midwest, 282. Of this committee that collected the Monolith and Midwest shares, all I know is Mr. Morgan. They took our shares to San Francisco, and put them in the bank at San Francisco. I don't recollect if that was both our Midwest and our Monolith shares. I believe it was Mr. Alexander who called upon us to get us to give 50 cents a share for promoting the committee's campaign. I don't think Mr. Craig and

(Testimony of Marie M. D. Craig.)

I put up this 50 cents a share with the Committee at the time.

I heard about the gold mining enterprise known as the Tyler agreement, or the Consolidated Mines of California first in the latter part of '35. Mr. Alexander called at my home at that time. No one was with Mr. Alexander at that time. Mr. Craig was at home at the time he called. We had a conversation with Mr. Alexander at that time, at my home on the ranch, 10 miles from Riverdale, Fresno County, in California. Mr. Alexander said he had been up to the mine and he thought it was a good proposition. He had a piece of ore. Of course, it didn't look very much like there was very much gold, but there were indications of it. And he said that he thought he would buy some shares too, he talked it over with his wife and his wife thought they would take a chance on it. They said they weren't taking much of the ore out at that time, they had a small mill, and what they were making off it they were putting back to get a larger mill so they could get more ore out, and that they expected—not at that time—but they expected it would be quite a paying proposition. As to who was being paid in this promotion. I believe he said only the engineer and they were putting what they were making right back into the mine again. I believe he said that the ore was worth about \$27 a ton, but there was the other ore, some ore was worth more than that. There was nothing said in regard to

(Testimony of Marie M. D. Craig.)

dividends at that time. The following year, early in 1935, Mr. Tyler and Mr. Alexander came to our ranch. My husband was present during that conversation, and no one else. They said that it looked promising and that they thought that they would take quite a bit of ore out and that they thought at the end of a year, around December, that they would be able to pay us dividends. Later on a letter came, and Mr. Morgan's name was signed to it. In their discussion they said that Mr. Morgan had turned all his Monolith stock in for the mining stock. I met Mr. Morgan. I had business dealings with him through the Monolith Committee. I went to see him once in San Francisco. I exchanged all my shares of Monolith and Midwest for the gold mining shares. I think it was 806 gold mining shares I got in exchange. I believe they wanted to sell the stock so that they could get money enough to work the mine. (Examining documents) This certificate of the Consolidated Mines of California for 524 shares. It is No. 528—is one of the certificates that I received. And the second is No. 423 for 282 shares.

(By Mr. Law)

The signature is Frank S. Tyler, secretary, and W. J. Morgan, executive vice-president, and it is dated the 1st day of February 1936. Now, that is No. 423. And the same name on 528 and dated the 15th day of February 1936.



(Testimony of Marie M. D. Craig.)

(By the witness)

(Examining Document)

I received a letter on the letterhead of the Consolidated Mines, dated July 26, 1935, addressed to Marie M. B. Craig, and signed by Frank S. Tyler. That came to me through the mails.

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(The document referred to was received in evidence and marked

“GOVERNMENT’S EXHIBIT No. 19.”)

Subject to a Motion to Strike.

(By Mr. Law)

This is Consolidated Mines of California, July 26, 1935. It is a Los Angeles address here.

“Marie M. D. Craig,

“R. F. D. #1,

“Riverdale, California.

“Dear Mrs. Craig:

“I am now preparing to issue to my original partners in the Consolidated Mines, the stock which is due them.

“As a result of the 68 shares of Monolith Preferred and 34 shares of Monolith Common, you are entitled to and will receive 449 shares of Consolidated Mines of California stock. As explained to you in my letter of a short time ago, there has been no Treasury Stock offered

(Testimony of Marie M. D. Craig.)

for sale, nor do we propose issuing any Treasury stock at this time.

“In addition to the 449 shares you will receive; I am offering to exchange 282 shares of Consolidated Mines of California for your 282 shares of Midwest.

“Thus far I have confined this offer only to my original partners and each one is being permitted to transfer the stock on the same basis—that is, share for share.

“Should you decide to accept this offer, it will be necessary for you to wire me at my expense, immediately upon receipt of this letter, advising me of your acceptance. You will then endorse the certificate in blank, as the name appears on the face of it; have the bank guarantee your signature, and then send it to me at once, at 634 South Spring Street, Los Angeles.

“In addition to the above, I will permit you to buy an additional 269 shares for the sum of \$538.00, which you can pay either in one check or \$238.00 down and the balance over a period of three (3) months. Should you avail yourself of these two allotments, you would then own a total of 1,000 shares of Consolidated Mines.

“I wish to say to you, Mrs. Craig, that practically all of my partners in this transaction have been very glad to accept the offer which I have made to them for the reason that the situation at the property is most encouraging.

(Testimony of Marie M. D. Craig.)

Our engineers advise us that we have a substantial amount of ore blocked out and in sight; and the assays are running much higher than we originally anticipated. They also advise us to start work on our mill at once, which we are doing, and which we expect to have completed on or about September 15; and after that date we should start getting returns.

“As pointed out in my original letter, we have been working continuously on this matter, for many months and we are all very much enthused about the results accomplished to date, and feel that we have reason to look forward to a successful enterprise.

“I regret that the distance between us makes it impossible to give you this information in person; but I wish to assure you that the other officers of this company, as well as myself, expect to give their best efforts to make this company an outstanding success.

“I shall look forward to your telegram, immediately upon receipt of this letter.

“Trusting this is the information you desire and hoping that you will take advantage of the opportunity, I remain,

“Very truly yours,

FRANK S. TYLER (Signed)”

(By the Witness)

I did not put any cash into this deal. This receipt made out to me and signed by M. G. Alex-

(Testimony of Marie M. D. Craig.)

ander for 68 shares of Monolith preferred stock and \$68 to be applied on the Frank S. Tyler agreement in accordance with the terms, and so forth is just for shares.

(The document referred to was received in evidence and marked

“GOVERNMENT’S EXHIBIT No. 20.”)

(Examining document)

I got this in the usual course of the mails.

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(The document referred to was received in evidence and marked

“GOVERNMENT’S EXHIBIT No. 21.”)

(After objection overruled)

(By Mr. Law)

This is on the letterhead of Consolidated Mines of California, Bay Cities Building, Santa Monica, California. Dated July 1, 1937.

“Mrs. Marie M. D. Craig

“R. F. D. #1

“Riverdale, California.

“Dear Mrs. Craig:

“Due to a difference of policy governing the underground procedure, a change in the personnel at the mine has been put into effect.

“Mr. Colman O’Shea, who has had a wide

(Testimony of Marie M. D. Craig.)

experience in the operation of quartz mines, has been put in charge of operations at the mine.

“Mr. Byron E. Rowe, who has successfully operated mines in this section for over thirty years, has been made ‘Assistant to the President’ and put in full charge of directing policy and methods of mining and development.

“These men became active May 1, 1937 and the results obtained under them the first month are very encouraging—showing a profit for the first month; and after a careful and thorough study of the development to date, in their judgment, we may expect a continuance of satisfactory results.

“Not one of your officers is on the payroll and they will not be, until the corporation is paying satisfactory dividends; and they are just as anxious as you are, to receive them.

“We have moved to our new location in the Bay Cities Building, Santa Monica, California—not only because most of our business is transacted at our office at the mine in Moke-lumne Hill, California; but because it is more practical and less expensive.

“In the future you will be kept fully informed as to important developments and decisions.

“On behalf of the Board,  
“Frank S. Tyler (Signed)  
“FRANK S. TYLER,  
Secretary.”

(Testimony of Marie M. D. Craig.)

That came in this envelope dated Santa Monica, California, July 3, 5:00 p. m., 1937.

(By the Witness)

(Examining Letter)

I received this letter through the mails. (Mr. Law announced that the letter is dated October 10, 1935, and approved by Frank S. Tyler but not signed).

(By the Witness)

(Examining Letters)

I received this letter dated September 1, 1937, addressed to Marie M. D. Craig, and signed by H. L. Wikoff, through the mail; and this letter dated May 13, 1936, addressed "Dear Stockholder" and signed by Frank S. Tyler, secretary and treasurer; and this letter dated October 21, 1935, addressed to Mrs. Marie Craig and signed by Frank S. Tyler; and this letter dated November 19, 1935, addressed to Marie M. D. Craig, and signed by Frank S. Tyler; and this letter dated November 18, 1935, addressed to Mrs. Marie M. Craig and signed by Frank S. Tyler; and this letter dated November 8, 1935, addressed to Marie M. Craig and signed by Frank S. Tyler; and this letter dated August 9, 1935, addressed to Marie M. Craig and signed by Frank S. Tyler; and this letter dated July 12, 1935, addressed to Marie M. D. Craig, and signed by W. J. Morgan, executive vice president.

(Testimony of Marie M. D. Craig.)

Cross Examination

I don't remember whether I was one of the original partners in the Tyler agreement. (Examining receipt) I didn't know that it was the agreement. This is the shares that I turned in. They gave me a receipt for it. I guess that was turned in on the partnership agreement. I guess it was the agreement then. I don't recall anything about putting in the \$68 together with the 68 shares of stock. I did have 68 shares of Monolith preferred stock. I produced this receipt. This is the one I had, that has got my name signed there. That is my name and that is my husband's. They told me just to sign M. M. D. C. and at the bottom is my husband's initials.

(By the Witness)

I never got any dividends on the Midwest stock. I had owned it quite a while. Several years, anyway.

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GEORGE J. PORTEOUS

a witness for the Government, testified as follows:

Direct Examination

I am a mill man, assayer, and a miner. I was residing at Forest Creek Mine, in the Westpoint mining district, about 22 miles from Jackson. There are three forks of this Mokelumne River. It is the middle fork that I am living on. I owned or had control of some mining claims in that district about

(Testimony of George J. Porteous.)

that time. Some of them I had optioned to Mr. McKiver. Those were the Grand Prize and Mineral Lode. They were located on the Licken Fork River—as the crow flies about a mile and a half from the Forest Creek Mine where I now live. Mr. McKiver turned those over or sold them to Mr. Tyler. Following that, I entered into an agreement for some claims with Mr. Tyler.

This is a copy of the agreement that I entered into with Mr. Tyler. It bears the date of the 12th of December 1933 and states it is between George J. Porteous and Frank S. Tyler. It is not a signed copy. It is a carbon copy.

(The document referred to was received in evidence and marked “Government’s Exhibit No. 22.”)

Mr. Norcop: I am not going to read this, but just point out that the agreement is between George J. Porteous and Frank S. Tyler. It is of the date of December 12, 1933, and calls for a purchase price of \$14,000 and provides that that price may be paid by paying a 15 percent gross royalty of all minerals extracted from the property as is shown by the smelter returns, and it covers the Grand Prize mining claim, the Grand Prize extension mining claim, formerly known as the Gold Bar Mine. That covers 40 acres. And also the Mineral Lode, without saying how many acres.



(Testimony of George J. Porteous.)

(By the Witness)

\$14,000 was the full purchase price paid to me in accordance with the terms of that contract. I didn't receive any on that contract. I didn't receive any money at all, except what work they did on the property. They cleaned out a 200-foot tunnel on the Mineral Lode. Three fellows that I had put in there did the work, and I was there. That work was paid from the time that McKiver had the property. McKiver went on working for the people that had this contract with me. I did not have any discussions with Mr. Shaw about that agreement. I received only what work was done, by day's pay. In '36 I made another agreement concerning this same mine. I made a trip to San Mateo some time after I signed this first contract. Mr. Shaw telephoned up to Gilbert to come up and see me if I wanted to make a deal on the mine. I said I was willing to, so he came up and got me and took me on down to San Mateo. Mr. Shaw was at San Mateo shortly after we got there. The work was done before I went down. No cash payments were made on the first contract. That would be in '36 that I was in San Mateo. No one else was there with we three gentlemen while we were talking. All that transpired was making out the bond and signing the bond and making the agreement for the Grand Prize and the Mineral Lode, the same property that I had in this first contract. The new agreement and new bonds and lease was because the other one had run out. I en-

(Testimony of George J. Porteous.)

tered into a written agreement with Mr. Shaw there at San Mateo in '36. (Examining document) This is the contract that I have just referred to as being negotiated in San Mateo. The signature up here at the top is mine. And Consolidated Mines of California by blank, president, by blank, secretary, with no signatures. I signed the original.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 23.")

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GOVERNMENT EXHIBIT No. 23

(Agreement dated the 15th day of October, 1936, by and between George J. Porteous, a single man, of the County of Calaveras, State of California, party of the first part, and Consolidated Mines of California, a corporation of the State of California, of Los Angeles, California, party of the second part:)

\* \* \* \* \*

(Omitting pages 1 and 2 of the carbon copy of this Agreement and commencing with the last line of page 3, the Exhibit reads as follows:)

"In Witness Whereof, the said parties have hereunto set their hands in duplicate the day

(Testimony of George J. Porteous.)

and year in this agreement first above written.”

(In handwriting): “It is further agreed that party of second part shall pay to party of first part, the sum of \$50.00 per month each and every month for five months from date of this agreement and \$100.00 each and every month thereafter as long as this agreement is in force.

If any payment is not made by the 15th of each month this agreement becomes null and void.”

(In typing): “..... Party of the First Part. Consolidated Mines of California, By (Signed)

(Handwriting): W. J. Shaw Agent. By ..... Secretary,” Party of the Second Part (And

following the “Party of the Second Part”, handwriting as follows): “It is also agreed that

the full purchase price of \$12000 must be paid within three years from date and it is further

agreed that the full purchase price is to be \$7000.00 if paid on or before Mch 15-1938.

W. J. Shaw, Agent.”

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Mr. Norcop: This agreement is dated the 15th of October, 1936, between George J. Porteous of the County of Calaveras, party of the first part, and Consolidated Mines of California, a California corporation, Los Angeles, party of the second part.

Apparently it covers the same properties that were covered in the yellow carbon copies of the

(Testimony of George J. Porteous.)

earlier date, that is, the Grand Prize, formerly called the Gold Bar, and also the Mineral Lode.

Mr. Norcop: The price as set out here is \$12,000 and any previous consideration hereto paid by the party of the second part—that would be the mining company—and received by the party of the first part.

On page 3 of the document, the fourth paragraph apparently was X'd out and initialed by both parties, as the initials "O. K., G. J. P." and then the word "out" is written.

At the concluding part of the agreement there is written in handwriting, "O. K.," then "G. J. P." and in handwriting is the following, "It is further agreed that party of the second part shall pay the party of the first part the sum of \$50 per month for five months from date of this agreement, and \$100 per month thereafter as long as the agreement is in force. If any one payment is not made by the 15th of each month, this agreement becomes null and void."

Directly below that, as Mr. Porteous has testified, is his signature, party of the first part.

Then the mining company hasn't signed.

Then below the formal signature of the mining company, which is blank, appears in handwriting, "It is also agreed that the full purchase price of \$12,000 must be paid within three years from date and it is further agreed that the full purchase price

(Testimony of George J. Porteous.)

is to be paid"—no—"that the full purchase price is to be \$7,000 and paid on or before M-c-h 15, 1938." Then appears "George J. Porteous." And then appears "First payment of \$50 in cash hereby received." And then Mr. Porteous' signature.

(By the witness)

In accordance with this agreement I received payment every month thereafter, for, I think, seven months. The total I received under this agreement was 700. Then there were no more payments received.

By Mr. Montgomery: That is Mr. Shaw's signature on the copy of the agreement and the initials "WJS" appearing on the agreement are his handwriting.

(It was stipulated a two-page letter, dated December 4, 1936, on the stationery of National Hotel, Jackson, California, which has been stipulated to be in Mr. Shaw's handwriting, was delivered to the witness by Mr. Shaw, but he didn't accept it.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 24.")

I received this letter on the stationery of W. J. Shaw & Company, Investments, Los Angeles, dated December 4, 1936.

(It was stipulated that the defendant Shaw was negotiating these transactions and making these

(Testimony of George J. Porteous.)

negotiations with the witness as agent of Consolidated Mines of California.)

(The document heretofore marked in evidence as "Government's Exhibit No. 24" was withdrawn and marked "Government's Exhibit No. 24 for identification.")

(Document Exhibited)

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(The document referred to was received in evidence and marked

"GOVERNMENT'S EXHIBIT No. 25.")

(By Mr. Norcop)

"My dear George:

"Enclosed is check for \$50 as per our agreement. Please have the deeds to the two properties made out in favor of Frank S. Tyler and deposit them with the Bank of America at Jackson with instructions to the bank to deliver them upon the receipt of 5,000 shares of the common stock of the Consolidated Mines of California. It is necessary to have these made to Frank S. Tyler as he is secretary-treasurer of the corporation. Please attend to this as soon as possible.

"Kindest regards and sincerely,

"W. J. SHAW."

(Testimony of George J. Porteous.)

That is W. J. Shaw's signature which has been stipulated to.

(By the witness)

I did not make out deeds for the mines in exchange for 5,000 shares of stock in the Consolidated Mines of California. [75] I received the \$50, but I didn't sign nothing for any shares, or did not take any stock at all. I was standing on the agreement that I had executed down at San Mateo. I first met Mr. Shaw in 1934 at the Grand Prize mine, which was my property. That was after the agreement was made.

#### Cross Examination

(Examining documents) The only contract I remember, is the one that provides for \$12,000. The Ora Plata and Mineral Lode are different mines, about three or four miles apart from the Grand Prize. Plaintiff's Exhibit No. 23 covers the Grand Prize mining claim and the Grand Prize extension mining claim formerly known as the Gold Bar containing 40 acres and also the Ora Plata and Mineral Lode. They are separate claims. The one for the \$6,000 is only the Ora Plata and Mineral Lode. They were both put in one agreement. I signed one copy and Mr. Shaw signed the other for the corporation, in the second group.

(The document referred to was received in evidence and marked as "Defendant's Exhibit C.")

(Testimony of George J. Porteous.)

There were four claims there. I met Mr. Shaw—Mr. Tyler was not with him, nor was his wife. The three claims were The Grand Prize, the Grand Prize extension, the Ora Plata, and the Mineral Lode, side by side. The first two, the Grand Prize and the Grand Prize extension is 3,000 feet, and the Mineral Lode and the Ora Plata is 15 x 12. I never received no royalties. I did not keep track of what was [76] going on. There wasn't no operating and milling at all anyway. They just cleaned out an old tunnel, that was on the Mineral Lode.

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R. H. LYTLE

a witness for the Government, testified as follows:

Direct Examination

I live about 12 miles above Mokelumne Hill in Calaveras County. About 20 miles from Jackson. In 1933 I owned or had control of some mineral claims near my place. Those were the Pay-Day, West Extension, and the Tunnel Site. I optioned those to Mr. McKiver in 1933. He took possession of them and commenced operations. I know that after Mr. McKiver's time had about expired he made some deal with Mr. Tyler. I first met Mr. Shaw in December of 1933, at my brother-in-law's home, Bob McKisson, at Rich Gulch, a few miles below where I live now. My brother-in-law, Mr. Shaw, Mr. Tyler and, I think, Mr. McKiver were there. I don't think Mr. McKiver was present. I think



(Testimony of R. H. Lytle.)

Mr. Shaw and Mr. Tyler came over with McKiver. We talked the matter over with Mr. Shaw in regard to taking over the properties. He had an agreement written up. I said, "No, we won't take that one." "You make one out like this one that Mr. McKiver had, changing dates and names, and it will be satisfactory." This document, dated the 18th of December 1933, is the document to which I have just referred.

(The document referred to was received in evidence and marked "Government's Exhibit No. 26.") [77]

The signatures on the last page are those of R. H. Lytle, R. F. McKisson and Frank S. Tyler. This agreement is between R. H. Lytle and R. F. McKisson, both of Mokelumne Hill, Calaveras County, parties of the first part, and Frank S. Tyler, party of the second part, and this called for a total purchase price of \$8,000. On the foot of page 1 the initials are "O. K. F. S. T." I can't make out what is below this name (indicating). Oh, yes; "W. J. Shaw." And then "R. H. L." is my initials. Then there is a change made in the text on page 2, the top three lines, which have been initialed. Those initials are those of Frank S. Tyler, by W. J. S. The handwriting on the cover of the agreement is mine. This contract was supplanted by a later contract.

(Testimony of R. H. Lytle.)

(By Mr. Montgomery)

We stipulate that this agreement was executed on or about the date it bears and was signed by the parties whose signatures are affixed thereto.

(The document referred to was received in evidence and marked "Government's Exhibit No. 27.")

Mr. Norcop: The next one is dated the 10th day of January, 1936 between the same parties.

(The document referred to was received in evidence and marked "Government's Exhibit No. 28.")

(By the witness)

I didn't get final payment until somewhere along about June 4, 1936. I was paid in full after the execution of this third contract of 10th of January 1936. We received a royalty of about \$145, a shipment of ore was made to the Selby Smelting Works, and interest on deferred payments amounted to \$170. It was somewhere around \$8300. I had operated [78] these claims myself about 1917. We operated about a year. The values of the ores I extracted at that time ran between \$14 and \$15 a ton. We took out somewhere around 200 tons. One of the boys had to go to war and the younger one didn't care about mining, and so it left me alone, and finally we decided to quit it. During that time we purchased a five-stamp mill. We paid

(Testimony of R. H. Lytle.)

\$100 for the mill and \$50 for hauling it. When we were operating there, we did not have very much dilution of the ore from the country rock. We had a small vein. I don't think at any time it was over 19 to 20 inches. The tunnel that we were working was an ordinary tunnel width, about four feet on the bottom and three feet on the top, probably from six to six and a half feet high. There were three of us men. We made a little money. After we suspended there in 1917 we leased the property to another party and he worked it awhile. That was along in 1920 or '21. After that it laid idle until I located the property. After that I leased it to a party who did a little work, and nothing came of it. I held the property prior to location, by leasing to the prior locators. I was making a living while I was at it. The first abandonment lease that I gained that was opened seriously was opened in 1933 to Mr. McKiver. The price I made to him for the property was \$8,000. That was succeeded by the arrangement with Mr. Tyler. When you transfer the property, it is quitclaim deed, or something like that. I didn't have no patent. After Mr. Tyler took posses- [79] sion, I worked in the mines there. I think I took direct orders from McKiver. Now, whether Mr. Tyler was out there, whether he was the head of it, I just don't know. He was the one that had an independent lease with me prior to Tyler. I worked in the ditch tunnel.

(Describing mine and tunnels)

(Testimony of R. H. Lytle.)

We will look south through the mountain.

This is the hillside (indicating). This is the hillside, something like that. This is the ditch tunnel here (indicating). This is the ditch (indicating). That now is a utility ditch delivering the water to Mokelumne Hill and San Andreas and taken out of the south fork of the Mokelumne River. The ditch is mostly a flume along there with the exception of places. This is the ditch tunnel (indicating), the tunnel in which I worked. The mill tunnel was up the hill (indicating). Back in 1917 the stamps were placed up here at this place (indicating). Outside of the entrance. You bring the ore and dump it and the stamps stamp them. In 1933, I went in there with McKiver under the lease I gave Mr. Tyler and I worked in this ditch tunnel. I worked there from that time until about somewhere in June 1935. About a year and a half. There was a man by the name of Hogan was working with me. There was a man by the name of Barnhardt sharpening tools. I think there were some four or five of us in the tunnel, and two men on the outside. Between the beginning of the operations in December '33 and the date of June '35, there was work done up there in the mill tunnel. [80] They moved the crew and moved the pipelines and everything up to the mill tunnel. I think I made a statement that \$8000 or \$10,000 would show it up whether it was any good or whether it wasn't in my opinion. While I was working there Mr. Shaw visited the property

(Testimony of R. H. Lytle.)

once in a while. He told me one time that he was trying to raise about \$80,000 for development of the property. I said that I thought that was a lot of money. I said I didn't know what he was going to do with it. The ditch tunnel was extended while I was working there, about 700 feet. It was in 300 feet, when Tyler took over the contract. It went on 700 feet further, a thousand feet or more. Once in a while I would take a sample for assay, but every day I panned the rock. Sometimes I would take and knock down some rock from the face of the drift and put it in a pan and take it outside and pan it in this ditch. Pan out all the loose material and save the gold in the pan. If we are taking a sample across the vein, you generally take your pick or whatever tool you use and cut right across the vein and catch the rock in a box and we take our samples that way. The samples up from the entrance to the 460-foot post in the ditch tunnel I don't believe were any good. As far as I know, from my panning, I couldn't get any gold. At the 460-foot post we struck a pretty good showing of ore. We got some very high assays out of it. One was \$179 a ton. There was about a 20-foot length, not all that kind of ore. It would average about \$8.00 a ton. We mined all that was in the tunnel. We did not do any stoping or drifting on that place. We were drifting tunnel. We were more interested in drifting a tunnel. The vein didn't stop. Drifting this lower ditch tunnel averaged [81] around 30 feet

(Testimony of R. H. Lytle.)

a week. The width of the vein as we went along there in some places might be a foot, 18 inches, sometimes less than that. None of that ore from this foot or more vein was separated and saved for shipment. That is, at this particular point or place. That is, we are going beyond the 460-foot point. We never shipped any raw ore out of the ditch tunnel. We milled some of it and ship the concentrates, but not from along in there. The ore that we milled was along about 600 feet in. The ore we took out at that 460 point was placed on the dump in a place where we could throw it into a car and mill it. That was milled. While I was there my old mill was partially taken down and we moved that mill down to its present position. The stamps were moved from up above. There were five stamps and we moved them down to this location here. While I was there, no additional stamps were put in. While I was there, they milled some of this ore that had been on the dump through this mill at the new location.

I think Mr. McKenry succeeded Mr. McKiver as the direct straw boss or shift boss there. He was not in charge of operations as long as I remained. I think he came there in May or June of 1934. I don't think he was there over a couple of months. He said he was a trained man in mining, He come in the tunnel and told me to start a cross cut. It was along about 485 feet, and as you face the tunnel going in, to the left; a cross cut to the

(Testimony of R. H. Lytle.)

south, at an angle going [82] off from the ditch tunnel of almost 90 degrees. It was a little over a hundred feet. No values were encountered in there. When I worked up in the upper tunnel, the mill tunnel, we run that in about 530 feet, extended it that much further than it was, making it about 700 feet. There were values of commercial character encountered in extending that tunnel. I think we extended the tunnel ahead about 20 or 25 feet and we hit a pretty good grade of ore. The smelter returns showed a return of about \$40 a ton. There was a shipment made to Selby of 34 or 35 tons. I think it was along in December of 1934. We ran those mines in the wintertime—we have snow, but not enough to interfere with the operations. To extract the 35 tons of ore we mined in that mill tunnel about 20 or 25 feet. The vein was 16 to 18 inches in width. We stoped above the tunnel, maybe an average of eight or ten feet. In this particular place the walls were soft, not very hard, and then there was some dilution with non-ore bearing rock. Mr. Gilbert constructed a kind of a sorting table at the chute below the stope the roof of the tunnel, and as the ore came down on this sorting table, a man could stand there and take the waste out of it. After you knocked it down, you couldn't get a true sample of the vein matter. Samples were taken after the ore had been knocked down along with this dilution material of country rock. They were not as high in comparison with

(Testimony of R. H. Lytle.)

taking samples directly off the vein. There were no other shipments [83] of raw ore made to the smelter besides this one that I have just referred to while I was there. Concentrates were shipped. There was ore put through the mill, and that mill was five stamps, and then there was amalgum plates below the stamps, and then from there into the flotation plant. I wouldn't know what percentage of recovery we were making in the mill. I did not have anything to do with the operations of the mill. I do not know how much or what quantity of concentrates were shipped from the mill to the smelter. Somewhere along the ditch tunnel, we drove what is called a raise, or opening upward to reach the mill tunnel. That was done while I was still there. It was started from along about 485 feet. (Marking map). This is about 200 feet here (indicating). The vertical distance between those two tunnels was 151 feet. That is an adit. No ore was shipped that came out of this raise. That was allowed to drop down through here and put out on the dump. This raise was put in under Mr. Gilbert's superintendency. The mill-head is the ore before it goes into the mill, after it is passed through the crusher and through the crushed ore bin, and out of the feeder belt or table. The mill-heads assayed during the time that they were putting ore through the mill while I was there from \$10, \$12 to \$15. Mr. Gilbert came on the job along in July of 1934. He was working



(Testimony of R. H. Lytle.)

in the blacksmith shop most of the time under Mr. McKenry.

From the very outset of the Tyler operation, after Mr. [84] McKiver had gone and after Mr. McKenry was gone, Mr. Gilbert was placed in charge. He continued until I left there along in October of 1936. That is, he was still in charge then. I was there all through '34, '35 and almost all of '36. At the present time my home place is about a mile from the mine itself. I am living right at the property, on the mine. I have a cabin.

Talking about men who are working there in these small places, while one man has the name of being in charge of operations, we don't have the distinction that they have in large mining operations between a man being superintendent and sitting there in a swivel chair. All of these men had a certain duty to do. The man in charge was the man who gave the orders.

(By Mr. Norcop)

Mr. Porteous, who preceded Mr. Lytle, informed me at the recess that he made a mistake in an answer and he desires to correct his testimony in that respect.

(By Mr. Porteous)

You asked whether I had had any discussions with Mr. Shaw before I signed my first contract on the mine. I said no, and I should have said yes. I do not remember anything particular that was said in those discussions.

(Testimony of R. H. Lytle.)

(By the previous Witness)

I was paid \$4 a day. At that time that was just about miners' wages. I think Mr. Tyler was there during the early [85] period, I think up to about June 1934.

Going back to that 35-ton shipment that was made to the smelter that was taken from the mill tunnel in about 200 feet. We didn't continue to mine that section and take out ore, because the vein became smaller and there would be too much dilution the way we were mining it.—by using a machine drill and shooting, blasting with a machine. In the summer of 1935, I was in Los Angeles, and visited the offices of the company. There were discussions held there with regard to the operations of the mine, that I was present at. Mr. Gilbert and Mr. Shaw and Mr. Sampson were there, in the offices at the Banks-Huntley Building. The discussion was in regard to putting up a mill. I don't recollect very much about it, because it was an engineering talk between Mr. Sampson and Mr. Gilbert and all I know or remember is that they talked about erecting the mill. I don't know if there was a final decision made or not. The discussion pertained to the transfer of the old mill down to its present site. I think Mr. Morgan was present at that discussion. I returned then to the mines after that trip, and I was there until late '36. The five stamps were moved from up the hill down to the lower level along

(Testimony of R. H. Lytle.)

in the latter part of August or the first of September, 1935. The men who were on the job at the time did that job of moving and erecting the reconditioned mill. Mr. Gilbert was overseeing it. The mining and milling costs after this mill was erected and [86] ore was mined and run through the mill—ran around eight or nine dollars a ton. I was still there when Mr. O'Shea came to the property. He came in the latter part of October of '36. Mr. Gilbert was still there and in charge of the crew of men. Mr. O'Shea stayed there and worked as far as I know. When Mr. O'Shea came on the property, I went off. Mr. O'Shea came up with Mr. Gilbert from Los Angeles. Mr. Shaw was not there at the property after Mr. O'Shea arrived and while I was still there working. I went to make a correction. He asked me in regard to who was in the office at the time we were discussing the building of the mill. In Los Angeles here—I don't think Mr. Shaw was in the office.

#### Cross Examination

Mr. Morgan, Mr. Gilbert, Mr. Sampson and myself were there. Mr. Sampson was an engineer employed by Mr. Shaw or the Consolidated Mines Company. Mr. Sampson did not direct as to any of the work that was done on the mine as he came out there, and looked the situation over. I did not have any contact with him personally. I was on the property from the time that Mr. Tyler took over,

(Testimony of R. H. Lytle.)

until the latter part of October, 1936. I saw Sam Chaney. He and I did not go over the mine together. I did not give him any information with regard to it. I saw him out on the premises. I think he was there the better part of a day. I saw maps that had his name on them. The maps that he had was a map that was made by a man by the name of Johnson and who had an option on the property before Mr. Shaw took it over. I do not know anything about the maps that [87] were used in getting agreements for transfer of the Monolith stock for the mining company stock. I am able to read mining maps.

Sometimes there were 10 or 12 men working on the premises during the time that I was there. In 1934 there were six or eight men. In 1935 there might have been from 10 to 12 men. And in 1936 during the time I was there just about the same number. There was not particularly any change in the number of men there, depending on the character of the work that was done. When we were building the mill, the mining crew went outside and helped put up the mill. That is that five-stamp proposition. The mill didn't have a compressor, but there was a small compressor on the job. The equipment was a compressor and a blower, is all. The mill included the stamps, the plates and the flotation plant. They did have a compressor in the mill, too, a larger compressor later. The flotation

(Testimony of R. H. Lytle.)

plant was a system of separating concentrates. It isn't of a big tub and running water. That is flotation. They put in a certain reagent that causes the water to fall and brings the sulphites up to the top and runs them off in a bin or place to receive them, and the tailings go out another opening. That is a part of the milling equipment. This separation takes place in the flotation cells. We had a compressor there. It is a portable compressor, right at the mouth of the tunnel. The capacity was about ninety cubic feet. We had a rock drill—a black- [88] smith shop—drill steel with holes, and so forth; rails and a car. Our five-stamp mill had power. It was a gasoline engine. There were about four cabins. One was used as a change room and the others were places to live. The ditch gave us plenty of water, for the purposes that we needed it for. The tunnel is a little better than a thousand feet, had been extended from 289 feet to a thousand sixteen feet. That cross-cut was between 100 and 120 feet. Some of the tunnel samples went pretty good, and some of them not too good. There wasn't any value at all until about 460 feet. At the time we started development work there on the mine, we did not have any raises from one tunnel to another. That raise was put in with my work. I work in the tunnels. During the time that I was there we advanced the ditch tunnel from 289 to 1,016 feet. We run this cross-cut in from 100 to 120 feet. We made that

(Testimony of R. H. Lytle.)

upraise 178 feet and we drove the mill tunnel ahead from 169 to about 700 feet. We took out this bunch of ore out of the mill tunnel at the 200-foot station, and built the mill. I am speaking of the small mill that was built while I was there. The other mill was the same mill, only they added five stamps to it. There was no Diesel equipment while I was there. There was a lot of development work done after I left. While I was working there I kept a book on what happened from day to day. It was burned up. There was a fire there at the property. I think I can remember about what the development was by July [89] of 1935. We had driven the upper tunnel 707 feet. There were some shoots. A lense is a body of ore. In the shape of a lense it may be pointed at the top and widened out as it goes down, and is the same way on each end. When I say that the lense was 30 feet, I would mean it was 30 feet across. There were lenses on this property in July 1935. I have seen samples taken from shoots that would go \$23. I know about the shipment of 33 tons that showed a gross of \$37.26 per ton. The vertical depth of the ditch tunnel below the upper tunnel was 151 feet. This ditch tunnel never was driven easterly. It was driven westerly. It was driven 1016 feet in the tunnel. We might have made a profit on an average of \$10 per ton ore.

(Examining a letter to Mr. Voget dated July 12, 1935, and signed by W. J. Morgan, executive

(Testimony of R. H. Lytle.)

vice-president, introduced as Exhibit No. 10). I wouldn't say the statements with regard to the development work there are correct. It would have been possible to have gotten those assays, but I wouldn't say they were average assays. It is not the average value of the ore.

It says here "Samples in the stope on the 100-foot shoot indicate a value of approximately \$23 a ton, eliminating high assays, while the general dump samples gave \$25.00 per ton. However, we recently shipped some 35 tons of this ore to the smelter"—As far as this particular place, that 100-foot shoot, that is okay. When you speak of the hundred-foot [90] shoot shows values of \$38 a ton, I would assume that that was the average value, but if it is just an assay that was taken out of the shoot and out of the place, why, \$38 a ton is okay. You could get it anywhere if you know the place to pick it. I think the cost of the drifting of the tunnel would be around \$12 a foot. I had nothing to do with the McKisson or the Mineral Lode Mines; nor the Grand Prize Mine. As to the McKisson mine, we had a road tunnel—a mill tunnel (the pine *three* shoot), and the Menadew tunnel. And we had some stopes. I would figure about \$12 a foot on the tunnels would cost about \$8400 on the ditch tunnel at \$12 per foot. The cross cut tunnel would cost more, about \$15 per foot. That would be about \$1500 more, and there was about 500 feet

(Testimony of R. H. Lytle.)

in the mill tunnel, and that would be about \$6,000 more. And about, there is 178 feet in the raise at about \$14.50 a foot, which I can't compute in my mind. Of course, there was other expense of building around there. \$24,000 is not an over-estimate on the amount of work that was done. There may be other expenses that I haven't enumerated. (There was exhibited Samuel Emil Chaney's mining engineer, report to Mr. Frank S. Tyler, under date of October 31, 1934). There has been a house built since this was made up. You can pick up those old mills. They sell for junk. However, when I bought that in 1917, why, it is a good mill. It is just as good as it was when it came out of the foundry, as far as that is concerned. It probably cost \$500 or \$600 new. The mill never cost him anything, because the mill was on [91] the property. The jack hammer is all right, and the drill steel and the compressor, and the forge, and pipe. As to the other two claims—the west extension adjoins on the west end of the Pay-Day, and the tunnel site is on the east end. The tunnel site is a fractional claim. I know nothing about the Grand Prize. That is Mr. Porter's; and about 10 miles away. The Mineral Lode is in the same location. I do not know anything about the development work done there. The development work was done in a good and workmanlike manner all the time that I was there. The development work could not have been pushed in faster than Mr. Gilbert and I did it with our equipment.



(Testimony of R. H. Lytle.)

I never asked for any equipment. I don't think I ever suggested to Mr. Gilbert that he ask for it.

### Redirect Examination

When I was asked about a figure of \$24,000 for the tunnelling and proceeded to give the total tunnels that were in there, I did not have in mind when I gave those figures as to the lineal feet of tunnels and the raises the date of October 31, 1934. That was the complete job of tunneling and raising up to the time I left there, in late '36. I have read the letter of July 12, 1935 through. As to the statement: "Samples in the stope on the 100-foot shoot indicate a value of approximately \$23 (eliminating high assays)." We did get some high assays. I don't have in mind any hundred-foot shoot. I wouldn't know where that shoot was unless you [92] could show it to me on a map. It says in the stope on the hundred-foot shoot. There is a stope there, but where we took out this shipment of ore that grossed \$37 a ton. That was the stope I indicated a while ago that is above the raise here. We discontinued operations there after we took about 35 tons. As to the statement: "While the general dump samples gave \$25.00 per ton." I wouldn't know. As to the statement: "However, we recently shipped some 33 tons of this same ore to the smelter and it showed a gross of \$37.26 per ton." Whatever the smelter sheet shows there was the amount of ore

(Testimony of R. H. Lytle.)

taken. I think it was 34 or 35 tons. As to the statement: "a more or less continuous ore shoot—some 300 feet long has been developed on this level, the average value of which (eliminating the very high samples) is about \$18 per ton." Well, I wouldn't know. I couldn't say exactly, but I have my doubts whether it would average that much. I did not have any knowledge of what the samples averaged in this raise. I never averaged them to see what they did average. I know they got some high assays and some not so high. As to the statement: "Considering the fact that we could have shown a good profit on an average of \$10 per ton ore, due to our low costs of milling, we consider this report very gratifying, owing to the much higher ore values than we ever expected." It would make a small profit at \$10 a ton.

#### Recross Examination

I did not get some assays as high as \$600 a ton, but I was told they did. [93]

#### Redirect Examination

I said that while the mine was being worked on a small scale that money was made to a certain extent. As to whether if a large sum of money had been expended upon the mine, say \$100,000, money would have been made, a profit would have been made. It all depends on how that money was spent.

(Testimony of R. H. Lytle.)

In good mining operations, on the proper directions, I think so. I think the mine could have been worked to a profit, without spending a hundred thousand dollars on it.

(Under questioning of the Court)

I would say the mine was a potential mine or a prospective mine. All of those are potential to a great extent. After the ore has been developed, then it is just like any other business. You have got to work it, and work it economically with good management, judgment, or sense is all. I think the prospects which showed during the time we operated it, during the three years, were such as would warrant men using good judgment of investing money in the mine, with the idea of making a profit.

(Under questioning of Juror Smith)

The additional stamps added to the mill was later, not while I was on the job. That is not represented in that item of \$24,000, nor the Diesel engine.

Recross Examination

I know the condition of the mine today. I believe you could operate it and make it pay. [94]

Redirect Examination

It is caved in in the lower tunnel and in the upper tunnel. To clean out the tunnel before starting operations would be a nominal expense. In this up-

(Testimony of R. H. Lytle.)

per mill tunnel, I think it is 30 or 40 feet, you can get from the portal in the tunnel until you hit the cave-in. This tunnel out here was 700 feet. Down below in the ditch tunnel, we went about 700 feet. That was beyond the raise. I think the total distance was a thousand feet. I don't know the condition of the ladders and equipment in this raise. I don't know if you can get up any farther than 20 or 30 feet here. I never went up, but they can be replaced. That raise probably is intact. We looked up there together, but we wouldn't climb up there.

#### Recross Examination

I took them out the 12th of May, just past.

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#### L. D. GILBERT

a witness for the Government, testified as follows:

(Discussion of Letter of April 9, 1937, to Mrs. Seeger.)

(The document referred to was received in evidence and marked as "Government's Exhibit No. 29".)

(Stipulated Mrs. Seeger would testify to receiving it through the mail.)

Mr. Norcop: And if called she would testify that she owned 654 shares of Monolith Midwest cement stock which she deposited with the stock-

(Testimony of L. D. Gilbert.)

holders protective committee. [95] I don't know that it shows when she deposited it, but the records here of the bank would show that.

Then, on October 3, 1935, she received certificate No. 308 calling for 654 shares of Consolidated Mines stock. She received that through the mails, together with a letter of transmittal.

Now, 654 shares of Consolidated is the identical number of shares she owned in the Midwest.

#### Direct Examination

(By the Witness)

I am a mechanical engineer. I reside in Grass Valley, California. I am employed by the Empire Star Mines Company Ltd, for the last three years. I have been working there in Grass Valley about four years. I was a little over a year out of the Lava Cap, a gold mining company, in the same district. I left the McKisson property about the middle of April in 1937. I went from there up to the Lava cap. I first became acquainted with Mr. Shaw in 1928 when I returned from Australia. Previous to 1928 when I returned from Australia my occupation was chiefly designing and building cement factories. Mr. Shaw and I had business relations before I went to the McKisson mine in 1928 or '29. Mr. Balen was promoting a cement grinding plant to be built in San Diego. It didn't go through. I went up in the mother lode country around Jackson

(Testimony of L. D. Gilbert.)

in the fall of 1933. I had had one small experience in the gold mining business in Colorado [96] a number of years ago. That, of course, was with the mechanical end. I am not a mining engineer. When I got up there around Jackson, I met a Mr. McKiver. He knew practically every property around there, we drove around the country and looked at a number of them. One was a claim that belonged to Mr. Porteous. They called it the Gold Bar and I think later it was called the Grand Prize. It was over in the West Point mining district. I wrote Mr. Shaw a letter and told him what I had seen up there and I suggested he get a few of his friends together and throw into a jackpot and we spend a little money and we might be able to develop a little mine. There wasn't very much else doing and mining looked to be something that was coming up. I think I wrote him either in the fall of '33 or the beginning of '34. I got a wire from him and he said he was going to look at it. He came up with, I think, Mr. Tyler and Mr. Shaw's wife and Mrs. Tyler. I don't remember if there was anyone else or not. I remember those four in particular. I think that Mr. Morgan was along, but I couldn't vouch for that. I believe I met Mr. Tyler before that. I first met Mr. Tyler in Mr. Shaw's office here in Los Angeles. This party of four or five arrived out from Jackson a little ways. I accompanied them over to this Porteous Gold Bar. Besides the party from

(Testimony of L. D. Gilbert.)

Los Angeles, there was Mr. McKiver and, of course, we met George Porteous over there and we all went together and went over the properties. Went over the Gold Bar. The parties [97] stayed there in the morning until lunch time. We went into the tunnel and also went down into the shaft. I think they went back down to Jackson and stayed overnight. Mr. Shaw was with me. I took my car and went over, and Mr. Shaw went with me. And after we had left there, when we were riding along, we were talking about it. The only thing Mr. Shaw asked me about was how much money it would be necessary, what I had in mind. And I said, "Probably eight or ten thousand dollars. If we spend that amount of money, we will be able to determine whether it will make a mine or not." That was with reference to the Gold Bar. I told him, "It is simply a prospect." "Well," he said, "that don't sound so bad." He said, "What would be the matter of getting three or four of them." He says, "If one proved all right and three a dud, we would still be all right."

I said, "Well, that is kind of the way the English do these things." I said, "It is all right if you feel like spending that much money." I went back into Jackson. It is my recollection that the party stayed overnight in Jackson. The next day Mr. McKiver took them over to the McKisson Mine. I don't believe I went along that time. No deal was consum-

(Testimony of L. D. Gilbert.)

mated between Mr. Shaw and I, or anyone else, with reference to any of the properties at that time, that I know of. I think they spent another day or so there and then went back to Los Angeles again. Shaw come up and they fixed up the lease on the McKisson and also one on the [98] other property, including a couple more of George Porteous' prospects that he had there. I first met Mrs. McKiver, and she told me that Mr. McKiver had started operating a small mine and was away. When Mr. McKiver came home I met him and talked shop a little. At that time I didn't know where the McKisson mine was. That was previous to Mr. Shaw's visit. We commenced to work on the McKisson Mine. After these leases were fixed up, Mr. Shaw said, "We will start the McKisson first."

Mr. McKiver already had a lease and bond on this property that was under way. It had just started a short time. I think he had only just recently started it and had only put in one or two rounds on this ditch tunnel on development work. We had a blacksmith, and there was Mr. Tyler, Mr. McKiver, myself and Bob Lytle and two or three of the local boys there. I just got a grubstake to begin with, \$20 a week. Mr. McKiver was drawing the same. I think it was the same. It was to be that we were to get a grubstake and do the development work, and then each would get a 10 per cent interest in the property, Mr. McKiver and myself. As I un-



(Testimony of L. D. Gilbert.)

derstood it, it would be a 10 per cent interest in this little company. Mr. Shaw agreed to that. Mr. McKiver sort of headed the work there for a while—a couple of months or so. After he was gone, then Mr. McKenry took over. I think he was there not over two months. He was supposed to be a mining man. Mr. McKenry started in and hired a mining [99] man as superintendent—I think his name was Turner. That wasn't so very hot. After they had been operating a couple of months I got absolutely fed up on it. I got to the end of my patience, really. I went down and called Mr. Shaw on long distance telephone. It must have been some time in June or July of '34. I drove down to Mokelumne Hill. There is a booth open day and night there that we could use. I called Mr. Shaw at his residence in Los Angeles. I said that Mr. McKenry didn't know anything, and they were figuring on revamping the mill; that they were erecting it in the wrong place. The sum and substance of what I told him was, "He was crazy and didn't know what he was doing." I think Mr. Shaw wired him to come down to Los Angeles and for me to come with him. Mr. McKenry and I drove down to Los Angeles. The upshot of that trip was equivalent to firing Mr. McKenry and putting me in charge. I went back to the mine, and went on running the job there, until about December 1936. The mill was just below the mill tunnel. It was very crude. It consisted of a cam shaft, cam, stamps, and battery. There was no crusher, no

(Testimony of L. D. Gilbert.)

plates. It was just the battery, the stamp battery, old stamp in the bin right where she is sitting. After I got back up there and took charge, we went right on developing this big tunnel, drifting. When I took over the ditch tunnel had been driven in probably 450 feet or 500 feet. I think it was over 500. The raise that is shown on this diagram that Mr. Lytle drew yesterday had not been put in when I took over. I think the raise is station 4.86. That means about 486 feet from the portal. Of course, where we figured our nought plus nought [100] was out about where the blacksmith shop *was*, because that was the original portal. It was just about right over the ditch. It was probably 50 feet from the actual portal. There was really no shop. We just had a forge set up. There was no roof over it. We put it up right away. When I went there first, Mr. McKiver had put track in the ditch tunnel. He had tracks and a car and a semi-portable compressor, a couple of jack hammers and steel, forges, an anvil and the necessary sharpening tools and things of that sort. He had only put in the ditch tunnel two or three rounds. A round is a drill length of steel and we ordinarily made three feet to the round. That is, we drilled a number of holes, six, eight, or 10, and shoot them and we would generally make a three foot advance. He had just gotten started before I took over, no development work had been done on the mill tunnel up above. As to how far

(Testimony of L. D. Gilbert.)

along did I work in the ditch tunnel before I went to the mill tunnel—we must have been in there 700 feet total. No ore was shipped out from the ditch tunnel during that time. None of it was milled. We had no mill. I went up on the mill tunnel and started driving that about three months before we shipped that ore. We must have started probably in February or so, '35. When we started work on the ditch or the mill tunnel, we drifted on through this shoot that we struck at. About 200 feet in there we struck a shoot, and then did some stoping there and knocked down some ore and shipped about 35 tons. The face of the old [101] mill tunnel when we started, we had only driven about 20 feet when we hit this shoot. I wrote that letter dated September 3, 1934, addressed to W. J. Shaw. This letter ties the thing up as to the date approximately when we started, because I think then I told them about the amount of money to take for lumber, for timbers to do the timbering to get into the mill tunnel. The only way I could fix the approximate time that I took over the job, is with my bank book. I made my first deposit August 15, 1934. But I believe I had charge a little before that.

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(The document referred to was received in evidence and marked as "GOVERNMENT'S EXHIBIT No. 30.")

(Testimony of L. D. Gilbert.)

Mr. Norcop: It is addressed to Mr. Shaw. "My dear Jack." The heading is "McKisson Mine, Moke-lumne Hill, R. F. D., California."

"Enclosed please find statement of McKisson Mine for the last half of August.

"You will note that I have estimated the material required, amounting to \$284.20 to open the Mill Tunnel level. As I told you over the phone Saturday nite, after carefully analyzing the whole proposition, this appears to be the best course to follow to get quick returns.

"We should contact the Pine Tree shoot after driving the tunnel ahead around 30 to 40 feet. \* \* \* " " \* \* \* This will give us backs of about 50 feet and [102] *and* according to assays this is a fairly rich shoot and further driving will bring this under the Menadue shoot \* \* \* "

"My understanding from our phone conversation Saturday night is that we start driving on the mill tunnel and drive thru the Pine Tree shoot and if the body of ore is there as anticipated, to go ahead reconditioning the old mill at the least possible expense and mill out this ore. Mr. Chaney"—— " \* \* \* and Mr. Turner \* \* \* "

" \* \* \* Mr. Chaney and Mr. Turner agree with me that we should in this way get *out* money back even if no further ore bodies are developed.

(Testimony of L. D. Gilbert.)

This is no unnecessary work as in any event the Mill Tunnel should be driven ahead so that raises from the Ditch Tunnel level, the one we are working on now, may be brought up to the Mill Tunnel level in order to work the ore bodies below.

“In carrying on any construction work the most important point is to get the material on the job and before we can start fitting up the Mill Tunnel, this material as shown in estimate, will have to be purchased. This can all be bought in Jackson and for which we have to pay cash. To meet the payroll, purchase this material and take care of bills payable, will require \$1036.96, I have cash on hand and in [103] bank \$93.67 or 943.29 required. Therefore please have your bank wire their Jackson Branch say \$1000.00. On account of Labor Day, I figure you will get this letter Thursday. To give you a little time, I will go over to Jackson on Friday to purchase the materials to open up the Mill Tunnel level.

“I let Mr. Turner go the last of the month. Mr. Turner’s expenses amounted to \$17.00 but he said that owing to the fact that Mr. McKerry made a mistake in putting him on, he would be willing to accept \$10.00 for expense.

“Now if we could get McKiver straightened out things would go along in fine shape. As it is, he comes in when he wishes and leaves whenever he feels like it and I cannot depend on

(Testimony of L. D. Gilbert.)

him at all, and I am going to tell him tomorrow that he must either come regularly and put in full shift or stay away entirely.

“In order to keep a check on the disbursements, I shall send you the cancelled checks each month.

“I am keeping the invoices for gasoline in order to apply for the refund. If you have any of these invoices in your office which have not been sent in, please send them to me and I will send them all in together.

“I am,

“Very truly,

(Signed) “L. D. GILBERT.” [104]

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(By the Witness.)

I did get the money to push the mill tunnel along. We had to do some timbering where it had been stoped above, you see, and that was what that was for. I sent the letter dated November 2, 1934 addressed to W. J. Shaw.

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(The document referred to was received in evidence and marked “GOVERNMENT’S EXHIBIT No. 31.”)

(Testimony of L. D. Gilbert.)

Mr. Norcop: It reads:

“My dear Jack:

“I have your letter of October 29 in reply will say that I will get copies in duplicate of all assays run on this mine from the Mokelumne Hill laboratory today.

“Regarding shipping of the high grade ore in the shoot we struck on the Mill tunnel level: this ore could be sacked and shipped direct to the smelter but would cost us approximately \$30.00 a ton over and above mining cost, for sorting, shipping and smelting charges, at any rate, it would not exceed \$35.00 per ton, and if we were right up against it for money, in which case anyone would be willing to pay a premium, it would be the thing to do. But here’s where the difficulty arises, we cannot mine this shute and take out the high grade only. We would have to take out the entire shute, up to a point each side of the center. After mining, the ore would have to be ‘cobbed’ ”— [105] “—or sorted, and what is selected by eye could be shipped to the smelter, the remainder would have to be piled or stored for milling after the mill is erected. You can readily see that if we ship low grade ore the cost of cobbing, shipping and smelting charges would be a large percentage of the gross value,

(Testimony of L. D. Gilbert.)

and do not overlook the point that the royalty we are paying is on the gross.”

(By the Witness.)

The royalty referred to the people that own the mine. Whatever royalty we paid applied on the purchase price.

Mr. Norcop: “I would not recommend doing this unless we are right up against it for money.

“In my judgment, the proper way would be, especially with condition as they now stand, erect the mill and if we find by careful operation and a close check on all heads and tailings”—

“—that in running this extremely high grade ore, the loss would be greater than the smelting charges, say \$30.00 to 35.00 per ton, then we could pick out this extremely rich ore and send it to the smelter. The point is this uncomminting this ore”—

“—if our tailings, in running this rich stuff, do not exceed \$30.00 per ton, we are just about breaking even, whereas, if the run over \$30.00 or 35.00, we would be losing the difference.”

[106]

(By the Witness.)

I figured—we will say if it cost \$20, we will say, let's make it \$30, if it cost \$50 for handling this ore at the smelter, we do it ourselves. If our tails do not exceed \$30, why, say they were just \$30, we



(Testimony of L. D. Gilbert.)

just broke even. That is, the loss would be no greater. In other words, we would lose it actually, and the other way we would be paying it to someone like the truckers and the railroad and the smelter. At the same time we would be out the \$30.

Mr. Norcop: "You can rest assured that there would be no \$40.00 to \$50.00 going over the dump, because we would check our heads and tailings immediately we started operating. Peterson had just as rich ore as this and in his milling used amalgum plates losing all of his sulphides, and altho in some cases, his tailings ran fairly high, his average did not run over the smelting charges, and he still has his tailings, which when he gets tonnage, would pay to put in a small plant for treating them."

(By the Witness.)

Peterson has a very rich mine over in the mining district. It has been running a long time. It was very rich ore; about 10 miles from this property in Pine Groves just the other side of the Mokelumne River.

Mr. Norcop: "As to the milling test: If this were a complicated ore, 'yes,' but it is not a complicated ore." [107]

(By the Witness.)

Some ores are complicated. They are rather hard to treat.

(Testimony of L. D. Gilbert.)

Mr. Norcop: "It is a free milling ore, and the mill which we figure on building, would handle it without any difficulty. Were it a complicated ore, I should not think of designing a mill until mill tests had been run. You probably do not remember, but the last time I was in Los Angeles I brot up this same point with Mr. Chaney and he stated emphatically, that in this case, a mill test would not be necessary.

"Due to the terrain, we have very little room for storage without going to a big expense to erect something. In fact the little space we now have is gradually getting filled up with ore we have to take down in our driving operation. If we mined this high grade shute there would be a large percentage of the ore which would not be economical to ship to the smelter and would have to be stored until the mill is erected, whereas, were the mill built, and we found it economical to ship the highest of the high grade, it would be a simple matter. In other words, we would just skim off the cream, and not being very particular in the skimming, so as to be sure nothing but the highest went to the smelter, the rest could go thru the mill, making a very simple and economical operation, and really the [108] proper way to handle the matter. If you and I owned this mine personally, and did not have the money to build the mill, it would be

(Testimony of L. D. Gilbert.)

good business to go out and borrow it, rather than ship this ore to the smelter.

“Personally, I like Bob Lytle and have a great deal of respect for his ability as a practical miner, in fact, Bob is my right hand bower. He is on the job all the time, generally is *doen* to the mine from a half to an hour early, running pans on all quartz and thing of this sort, and we talk things over every day and mull thing over many evenings, but do not forget, that it is necessary to have some theory as well as practice, and you may rest assured I am willing and anxious to talk things over with Bob Lytle or anyone else where I think there is any benefit to be gained. However, I know a little about this game myself, and I have been in it so long that I appreciate fully the fact that every day you can learn something.

“Very truly,

(Signed) “L. D. GILBERT.”

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(By the Witness.)

After I wrote that letter, Mr. Shaw and I did not have any discussion with respect to shipping ore from that shoot up there on the mill tunnel. I think Mr. Shaw directed me [109] to ship the ore that was taken out of the mouth of the mill tunnel. We shipped this 35 tons. It was hauled out by trucks.

(Testimony of L. D. Gilbert.)

We had to pull it up a hill and truck it up on top of the hill where we could load it onto a big truck. The big trucks couldn't get down.

After that had been processed at the smelter to find out what the total cost of getting the net return from the smelter was, the total cost of producing the net result that comes from the smelter would be made up of the cost of the mining, the sacking and the freight, or, that is, the truckage and the smelter costs. \$30 or \$35 would cover everything. That would be the total cost of the mining, the smelting, the trucking, and everything in connection with it; overhead and all. That is at the mine. I saw the smelter return from this particular shipment. On Exhibit No. 12, the second sheet is the photostatic copy of the smelter return dated January 17, 1935. It run 1.16 ounces of gold, 1.55 silver per ton, no other values. The gold is worth \$31.81 an ounce and the silver is worth 64 cents an ounce. The valuation was placed on it the day it arrived at the smelter, I think. That is before they actually start processing—they pay you. It is run through a sampling plant and the sample is taken and you are paid on that basis. It is probably treated later. This ore might not have been treated for a month or so. In this case here we had an umpire. His name was Hank. He is an assayer and is right down there. [110] He gets a part of the sample of the ore that is passed through the sampling plant and he makes

(Testimony of L. D. Gilbert.)

his assay at the smelter, and if there is too great a separation between them, they probably run another one and they decide on what the actual value is, because you must remember it isn't absolute. There is no such thing as absolute value of a thing of this sort and they kind of compromise. The total value of the ore was \$36.91 plus 35—say \$37.00 is what it actually run. This is what the ore actually was, \$36.91 for the gold and 35 cents for the silver per ton. It showed there 64,283 pounds—32 tons. That return is referring to the same shipment that was taken out of the 200 foot point in the mill tunnel; the only shipment we ever made of crude ore. That is what I refer to as rich ore in my letter. After I saw this smelter report, I thought it would go higher. I was disappointed because I have gotten one sample that run over \$2400 a ton. It was just a little thin streak on the foot wall. After I got the return from this smelter, I think we kept on drifting in the mill tunnel. At some stage later on there was a transfer of that old five stamp unit down below to the ditch level. That was done while I was in charge of the job. I actually did the moving of the stamps, and setting them up. There was additional equipment procured to make the mill. We got an engine and amalgam plates and three flotation units—cells; three flotation cells. I had been against the mill up to that time. I didn't think we had showings to [111] justify putting in a mill. I was directed

(Testimony of L. D. Gilbert.)

to go ahead and transfer the stamps, and recondition the mill, by, I suppose, Mr. Shaw—that is, the office. As to how that decision of putting up that mill was arrived at—I was down to the office here and we talked it over. Reed Sampson by this time was supposed to be our mining engineer. And all the mining work was done according to his direction because I told him in the office that I was not a geologist. When I was down in Los Angeles, there was present at that discussion about the mill, Mr. Shaw and Mr. Tyler; and I think Reed Sampson was there, and I think Mr. Morgan. I don't remember just exactly. I think Mr. Jacobsen was there. We were all talking. I think Chaney was there, too. The upshot was that I was directed to put up the mill.

Just so you will understand a cross-section of that mill: here is the ditch (indicating). We come over the ditch here and here is our tunnel (indicating). Here is our shop (indicating). We come right out through here on a track into a bin. We dump it right in here over a grizzly so we could break up any piece too large to be put in the crusher (indicating). We come out here into the crusher and into another bin and into a feeder, into the stamps, and then here is the battery (indicating) and amalgam plates, and into the flotation machines. This is all ground and water added. It runs about 16 per cent solid. This would be a pipe (indicating) to bring it right out to the flotation [112] machines.

(Testimony of L. D. Gilbert.)

This stuff is carried on a concrete foundation, and then there is a building here that covers it (indicating).

Now, then, we added amalgum. We added amalgum or quicksilver in here (indicating), and what we call amalgamating in the battery and then the ground stuff comes over here (indicating), and the gold is caught right on the amalgum on these plates, the free gold. Then the tailings come over here and onto the floation machines and there we float off the sulphite, and from that the sulphites run out into—in a big plant we have a filter—but in a plant like this we run out into some barrels and decant it and we shove it out in here (indicating) and let it dry.

The sulphites are black like graphite, quite heavy, and the values are quite high on the sulphites if it is pretty good ore. This is the flotation machines here (indicating). The resultant product down at the bottom on the left is the ultimate recovery. Here is your free gold in here (indicating).

And in a free milling plant you generally get about 80 per cent of your values there in free gold. The rest you get in your sulphites. Of the remaining 20 per cent that we fail to get on the amalgums we get a certain percentage of it here (indicating). We might get, say, 95 per cent of the values in this coming from here (indicating) that is left in it. You see, that might run only \$2 a ton from here, we will say, and here (indicating). And we might

(Testimony of L. D. Gilbert.)

get 95 per cent of that. [113] The rest is overflow as tails; it is gone. You cannot recover any free gold in that flotation part. The free gold is all taken out. We are doing it quite satisfactorily up at the Empire right now. At that time it takes a particular reagent to do it, and if the gold is oxidized it is almost impossible, that is, if it has been weathered so that it is what some people call rusty. We mix with the liquid that comes through there after it goes over the amalgum, some sort of a xanthate and pine oils and there are all different reagents that you use. Sometimes it is a little lime and it is all according to the ore. We agitate that liquid and cause bubbles to form. In this machine, looking at the plan, there are three machines there, like that (indicating). This would be the cleaner (indicating). That stuff we take. The overflow here would go through the others and come back through again and over and over and over.

As to sampling of the mill heads—in this case we take the sample right here (indicating).

After the mill got to operating, its capacity ran 10 to 12 tons a day. We went on mining and extracting ore and putting it through the mill there for some time. This belt conveyor here that fed the stamp battery, every half hour we would take a grab sample of that and put it in a powder box, that is, we divided it up into three eight-hour shifts. It was corded up and we made an assay on it. We



(Testimony of L. D. Gilbert.)

did the same thing out here what was called the tails, and the [114] difference between those is what we should have extracted. I remember once we got a \$40 head assay. That was the highest. I think we never quite averaged \$10, because we figured that if we could average \$10 it was just about the breaking point. That, to me, was a little margin, but we would be pretty close if we didn't go at least \$10. While Mr. McKenry was there, the mill was not running. I never had a copy of the engineer's report that Mr. Chaney or Mr. Sampson made. I saw the map. On that map I saw the various points on the map where certain assay values have been found. That is the way they are made, that is an assay map. I don't remember that I compared the assays, but the amount of ore, because I think it was—I wondered how I could estimate it because, after all, you are on one side only and it is pretty hard to judge where these shoots show and how they would hold up and what the values would be. We were always hopeful, however, that we would get the rich ore. If I didn't make it go, I was just stuck for all my time. I just got a grubstake on the thing. Mr. Shaw and I did not have any discussion about any phase of Mr. Chaney's report. I knew there was a report. I remember Mr. Shaw told me that Chaney made a very nice report. I was around with him when he was up there. I met him. I know him. I got acquainted with him at that time.

(Testimony of L. D. Gilbert.)

(Examining a processed letter on the Consolidated Mines stationery, dated September 16, 1935.) [115]

I have seen this letter before. The signature down at the bottom is a reproduction of my signature. I signed the original.

(The document referred to was received in evidence and marked as "Government's Exhibit No. 32.")

The original of this mimeograph as taken off was prepared down here in the Los Angeles office. There was present, I think Mr. Shaw, probably Mr. Tyler, probably Mr. Morgan, Mr. Jacobsen, I suppose on that date. We just talked around on those lines. Of course, they were all anxious to, that is, in wishful thinking—I was a little more like the Missourian, you had to prove it to me, but I had two engineers that said everything was all right, although I couldn't quite see it myself, I still had my doubts as to whether the thing would make a paying proposition. But like Chaney and Mr. Reed Sampson, they are both mining engineers and geologists and, of course, they had a certain amount of weight, their judgment, over mine, although what I had seen there I couldn't see how we could really make a very good paying proposition. There was no discussion as to whether this letter was to be

(Testimony of L. D. Gilbert.)

sent out to all of the stockholders. There was no discussion as to what the letter was prepared for.

GOVERNMENT'S EXHIBIT No. 32

(By Mr. Norcop)

“September 16, 1935

“Board of Directors,

“Consolidated Mines of California. [116]

“Gentlemen:

“Complying with your request for a report of the results obtained to date on the McKisson property, I beg to advise you that the work on the construction of the mill has already begun and while I anticipate that we will be in production by November 1, I feel certain that it will not be later than November 15.

“As per instructions, plans for the construction of the mill are with the thought that our production can soon be stepped up to about 900 tons a month. I believe I am conservative when I say to you that when this point is reached, this property can easily net us \$10,000 per month”—

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(By the Witness)

It was my understanding that this five-stamp mill would be the pilot mill and the ball mill would double the output. We could get better extraction

(Testimony of L. D. Gilbert.)

and we would double the output, so we would run around 25 tons a day. In this letter, there is not any reference to the possible building of a ball mill to supplement the pilot mill. That was the original lay-out. I got the floor plans of this thing and I laid the whole thing out, including the ball mill.

(By Mr. Norcop)

“—and if developments progress as I anticipate, the returns can be a great deal more.

[117]

“Since we first started the development work on this property in February, 1934, I feel that we have made consistent progress. While at times it may have seemed to outsiders that the work was proceeding too slowly; still, since all of us know the hazards that usually surround the development and mining of gold, we wanted to be absolutely certain of our position. In other words, it was felt advisable to delay production and assure the fact that we had sufficient ore of commercial value to justify our going ahead.

“The investment of a substantial amount of money since we started is amply reflected in the large amount of tunnel work done and the values we have developed. Our values are proving to be much higher than we had anticipated.”

(By the Witness)

That was my statement. We got into this fine shoot of ore right at that particular time in the

(Testimony of L. D. Gilbert.)

ditch tunnel. Just a little beyond the raise there, there was a big fault, and on the other side of the fault we run into this fine body of ore.

(By Mr. Norcop)

“—and therefore our percentage of profit can be materially increased over the amount we originally expected. [118]

“Everything done to date has been with the thought of developing a profitable gold property. I feel sure that the results achieved will be gratifying to yourself and your associates.

“Respectfully yours,

“L. D. GILBERT (signed)

“Superintendent of Mine.”

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(By the Witness)

I dictated part of that letter. We talked this over. The whole letter is my opinion and belief at that time. And, of course, I was governed a good deal by their own opinions. I didn't put anything in there that I believed would catch the stockholders. Heavens, no, I wouldn't do anything like that. The approximate location of the ditch tunnel where we found that rich ore that I was referring to when we prepared the letter, just beyond the raise. We drifted on through it. We had it four feet wide in some places, the widest we ever struck.

(Testimony of L. D. Gilbert.)

The vein, and the values showed up pretty well. As I remember it, the total length of the shoot was about 150 feet. None of that ore was shipped to the smelter. The ore that we took out of there when we were drifting, we stored in the cross-cuts because we had filled in outside—remember, this is steep hillside and we had no room to store anything hardly. We milled it later. It didn't turn out very good. It didn't turn out nearly as good as we thought it would. Some streaks in there [119] were very rich and there was quite a bit that was low-grade. I really left the job about Christmas of 1936. That would be just before the first of the year '37. Mr. O'Shea took over the job when I left. Bob Lytle was not working with me up until I quit. Discussion was had between Mr. Shaw and I about Mr. Lytle's departure. I don't think it was a conversation; I wrote Mr. Shaw about it. I got a verbal reply from him. There was no discussion between Mr. Shaw and me when I discontinued and left the property. I felt that all of the stockholders felt—you know, a mine, if it doesn't pay, it is always the manager's fault. Although Jack, I think, or Mr. Shaw, really felt I had handled it just as good as anyone, at the same time I thought I would like to see somebody else try it. I did my best and I couldn't make a go of it. So they got Mr. O'Shea. I took him up there and he was up there a couple of months before I left.

(Testimony of L. D. Gilbert.)

(Questioning by Juror Daniels)

I did not say that I quit this management after I found out that they couldn't make a go of this mine. We talked about it, see, and of course, naturally, the directors and all that, they—I knew they felt that way. I assumed they did. So I welcomed Mr. O'Shea. We hadn't made any dividends yet, and of course, naturally, the manager is at fault.

(Questioning by Juror Schumacher)

We milled for quite a little while. We started just a few days before Christmas of 1935 and we run on through. [120] We had a few interruptions. Once or twice we stopped during bad storms. We had a ditch go out and didn't have any water, but we endeavored to operate straight on through. We got about 300 tons a month at an average of \$10 a ton. If we had additional investment, we could have gotten to the 900 tons. You see, we assumed, with the ball mill, that it would double the output of the present mill.

(Questioning by Juror Hippard)

That was not on the basis of eight hours a day or 24 hours a day, but around the clock, Sundays and all, that is, the mill.

(Questioning by Juror Schumacher)

It took three men on the mill, one on each shift. With a mill twice the size of that it wouldn't take

(Testimony of L. D. Gilbert.)

any more men. We operated a 400-ton mill on some other property with one man to a shift. As to whether we would have more men working in the mine—that is all according to how difficult the mining is. If it is easy going, a miner can get out three or four tons a day, and if it is hard going, maybe only one ton a day. As to cost of operating per day to produce 10 or 12 tons of material, how many men would it take all together—You can figure that the payroll is just about half. You can take your payroll and double it and get a close estimate of what your costs are. For instance, say your labor runs \$5 a ton—that is pretty high, of course—your total would be about \$10. That is just to get a rough estimate of where [121] you are. Six men could produce six to ten tons a day and run it through the mill. Plus the mill crew. The mill crew is separate from the other.

#### Cross Examination

I felt that if they had the ball mill, if they put up the big mill they were figuring on to begin with, that it could be made to produce a profit on a larger scale, you can do it on a closer margin. For instance, in the Empire Star Mine, we have a mine that runs ore less than \$2 a ton and we make money on it. The low-grade ore can be made profitable by magnitude of operation. Quantity is what you need. You get the bigger divisor and lots of it, you can work on a small margin because your labor costs



(Testimony of L. D. Gilbert.)

don't run up in proportion to the tons, by any means. The original plan was to put up a mill that would handle about 25 tons a day. That is conservative. Of course, until you operate on a certain ore, you don't exactly know what tonnage you get through. Another thing, it is governed on how fine you have to grind, and that can only be determined by actual practice, or by actual operation. That is one reason they put in a pilot mill, to find out just how fine you had to grind. We might have a dollar go through in tails and if it costs \$1.02 to get the values, we had better let it go because we would lose money. There is a point where they cross, that is, if you grind it finer, your costs of operation would run higher than the extra recovery you would get. It is difficult to [122] determine. The finer you have to grind, the more mill cost you have and, of course, less the output. I saw the mill that was installed after I left once on a visit one Christmas. I went down there and looked it over. It has another five stamps and a Diesel engine, another compressor. In fact, it was doubled, I would say, the output was doubled.

#### Redirect Examination

During the time I was running the job, if we operated at a profit, it was a very slight one all the time I was there.

(Testimony of L. D. Gilbert.)

#### Recross Examination

We were doing a great deal of development work while I was in there. As I looked at it, we weren't mining; we were simply developing, and the ore we got in the development work, we run through the mill, and we charged that against our costs.

#### Redirect Examination

You never get out of the development stage on a mine. Here we hadn't gotten to the point where we had enough ore developed to run it through on a big scale. It takes lots of work.

#### Recross Examination

While I was there, I don't think we ever got to the point where the mine was developed enough to be able to mine the necessary ore to accommodate a larger mill at that time. It was necessary to run our tunnels and develop our different [123] bodies of ore before we located that mill. You have to get the working places, and we hadn't arrived at that point. Your mill doesn't do you any good to have it lay idle unless you are assured of a regular and continuous output to keep the mill going. I figured when the point came when the mill no longer could keep up by running three eight-hour shifts a day, and were it possible to get out more ore, then is the time to add more grinding capacity to the mill. Unless you get to that point, there is really no reason to increase the capacity of the mill.

(Testimony of L. D. Gilbert.)

(By N. E. Hesla, of Internal Revenue Dept).

I have here the original tax returns filed by Edna F. Shaw, Pacific Palisades, Los Angeles, for the years '34, '35, and '36; the original tax returns filed by William J. Shaw, 634 South Spring Street, Los Angeles, for the years '34, '35 and '36; the joint returns filed by William J. Shaw and Edna F. Shaw, Pacific Palisades, for the year 1937; the original returns of Frank S. Tyler, 848 Nineteenth Street, Santa Monica, for the years '35 and '36; the original return of W. J. Shaw & Company, 506 Bay Cities Building, Santa Monica, for the years '35 to '38, inclusive; the original return of Consolidated Mines of California, 506 Bay Cities Building, Santa Monica, from the date of incorporation, September 1934, to December 31, '34, and the years '35 to '37, inclusive; the original return of Consolidated Mines of California, Inc., for the year 1938, and a partnership return filed by Frank [124] S. Tyler and associates, 634 South Spring Street, Los Angeles, for the year 1934. (Copies marked as follows)

Edna Shaw's income tax for '34, '35, '36 were marked Government's Exhibits Nos. 33, 34 and 35, for identification.

W. J. Shaw's income tax for '34, '35, '36, '37 were marked Government's Exhibits Nos. 36, 37, 38 and 39.

Mr. Tyler's income tax for '35 and '36 were

marked Government's Exhibits Nos. 40 and 41, for identification.

W. J. Shaw and Company income tax for '35, '36, '37, '38 were marked Government's Exhibits Nos. 42, 43, 44 and 45.

Consolidated Mines of California's income tax for '34, '35, '36, '37, '38 were marked Government's Exhibits Nos. 46, 47, 48, 49 and 50, for identification.

Tyler and Associates income tax for '34 was marked Government's Exhibit No. 51 for identification.

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### JULIA SCHUMACHER

a witness for the Government testified as follows:

#### Direct Examination

I live at 2015 Willamette Street, Eugene, Oregon. My husband and I were owners of 120 shares in the Midwest Companies. I never heard of the Tyler agreement. I heard of the Consolidated Mines of California. On March 16, 1936, when Mr. Tyler called at my home, I had a conversation with him at that time. During this conversation just Mr. Tyler and I were present. He begun by reviewing the Monolith trial, taking it step by step just as it had been going on. Then [125] he told me about Mr. Burnett. And Mr. Burnett had in his possession a great amount of the Monolith stocks and with all the expenses of this trial there seemed very little

(Testimony of Julia Schumacher.)

hopes that this Monolith stockholders would have anything when it was all settled up. We understood that this gold mine has just been found, the gold was all there, all they needed was the money to bring it out and put everything in operation and bring this gold onto the market. And we were to have dividends by the first of January, 1937. I said, "Well," I didn't want any more gold mines because my husband had one in Arizona and he also had an oil well in Montana.

Well, then he asked me to give him the Monolith stock. And I said the Monolith stock was all in the bank in a box.

Well, could I get it?

"Yes, I could, but I wouldn't."

Well, he made a point that he had to get out of town that day because he had so many places that he must visit that day before 8:00 o'clock.

I refused to get the stock.

"When will Mr. Schumacher be in?"

I said, "Half past eight,"

"What time can I see him?"

I said, "You may see him by nine o'clock or a quarter after nine."

Mr. Tyler returned. I heard Mr. Schumacher put a question to Mr. Tyler, and I sat there and I didn't have much [126] to say. And finally Mr. Schumacher turned to me and he said, "Mama, what do you think about it?" "Can you go to the bank in the morning and get the papers?"

(Testimony of Julia Schumacher.)

I told him I could, but I didn't want to; but if he wished me to, I would do it. So all arrangements were made that I should go to the bank. I went to the bank and I got the papers and I signed them and he took them. We got 120 shares of stock in the Consolidated Mines of California for our Midwest stock. The same amount as the Monolith. I had known of Mr. Morgan prior to Mr. Tyler's visit, through reading the letters that Mr. Morgan wrote to Mr. Schumacher. I had not had business dealings with him directly, but through this Monolith committee. We had full confidence in him. Mr. Tyler called on Monday and he called again that evening, and of course he called the next morning to take me to the bank and he brought me back and then he called again. Then he called the latter week of June or the first week of July. As to these stocks of the Monolith that was traded for the Consolidated Mines—Mr. Schumacher and I shared everything jointly, joint survivorship. I signed those.

(Letter stipulated to having been received through the mails).

(The document referred to was received in evidence and marked as "Government's Exhibit No. 52.") (Subject to Objection).

#### Cross Examination

We bought this Midwest stock in the early part of 1929. [127] We obtained nothing from it.

EVA M. GOODRICH

a witness for the Government, testified as follows:

Direct Examination

I live at 1336 West 47th Street, Los Angeles. On or about the 1st of June 1937 I owned some shares of stock in the Midwest Company. I traded them for Consolidated Mines. As to stock certificate No. 742 calling for 18 shares of Consolidated Mines of California which appears to be issued in the name of J. C. Goodrich and E. M. Goodrich, joint tenants, with full right of survivorship, which certificate is dated the 8th of June 1937, and appears to be signed by Frank S. Tyler, secretary, and bearing, apparently, the rubber stamp signature of H. L. Wikoff, president. I received the stock certificate in this envelope through the United States mails, postage prepaid.

(Certificate and Envelope offered  
in Evidence).

(Objected to on the ground that there is no foundation for it, no connection of Mr. Shaw with any deal of Mr. Tyler with respect to selling stock of this character).

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(The document referred to was received in evidence and marked "Government's Exhibit No. 54.") (Subject to reserved Motion to Strike).

(Testimony of Eva M. Goodrich.)

Number

Shares

742

\* \* \* 18 \* \* \*

Incorporated under the Laws of the State of  
California

**CONSOLIDATED MINES OF CALIFORNIA**

Capital Stock 1,000,000 Shares

No Par Value

Full Paid, Fully Voting and Non-Assessable

This Certifies That \*\*\*J. C. Goodrich and E. M. Goodrich, Joint Tenants with full rights of survivorship\*\*\* is the registered holder of \*\*\*Eighteen\*\*\* Shares, being the shares represented hereby, of Consolidated Mines of California hereinafter designated "the Corporation," transferable on the share register of the corporation upon surrender of this certificate properly endorsed or assigned. By the acceptance of this certificate the holder hereof assents to and agrees to be bound by all of the provisions of the Articles of Incorporation and all amendments thereto.

Witness, the seal of the Corporation and the signatures of its duly authorized officers, this 8th day of June, A. D. 1937.

(Seal)

H. L. WIKOFF

**President**

FRANK S. TYLER

Secretary



(Testimony of Eva M. Goodrich.)

(Registered envelope)

(from)

Consolidated Mines of California  
634 South Spring Street  
Los Angeles, California

(to)

Mr. J. C. and E. M. Goodrich,  
4532 S. Wilton Street,  
Los Angeles, California.

Registered 202095

Return Receipt Requested Fee Paid

(There was offered a certification by the Securities and Exchange Commission that the stock of this company was neither registered with the Commission nor any exemption [128] granted by the Commission to the registration of the same.)

Mr. Montgomery: We have no objection to the certificate as proof of the facts it states, but we object to any proof of the fact with respect to this defendant Shaw on the grounds heretofore stated, that he hasn't been connected with it.

The Court: Subject to that reservation the objection will be overruled and it may be received in evidence.

(Testimony of Eva M. Goodrich.)

(The document referred to was received in evidence and marked

“GOVERNMENT’S EXHIBIT No. 55.”)

(Subject to reserved Objection.)

(By Mr. Norcop)

“United States of America

“Securities and Exchange Commission

“I, Francis P. Brassor, Secretary of the Securities and Exchange Commission, Washington, D.C., which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C.A., Sec. 78a et seq), and official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission, pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, do hereby certify that:

“A diligent search has this day been made of the books and records of this Commission, and the books and records do not disclose that any registration statement has ever been filed with [129] this Commission under the name of Consolidated Mines of California, pursuant to the provisions of the Securities Act of 1933 and/or the Securities Act of 1933 as amended.

(Testimony of Eva M. Goodrich.)

“In witness whereof I have hereunto subscribed my name and caused the seal of the Securities and Exchange Commission to be affixed this 13th day of May, A.D., 1941, at Washington, D.C.

“FRANCIS P. BRASSOR  
“Secretary.”

Affixed thereon, as you can see, is the seal in due course.

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A. E. GARDNER

a witness for the Government, testified as follows:

Direct Examination

I live at Porters Grove, Oregon. I haven't any business or occupation, at the present time. I was a shareholder in the Midwest Company. I owned 304 shares. I put these shares up with this Monolith committee, and contributed my 50 cents a share. I first became acquainted with the Consolidated Mines of California in March in 1936. Mr. Tyler called at my home. No one was with Mr. Tyler when he called at my place. I did not have a conversation with Mr. Tyler at that time. We made an appointment to meet him—he called one day and we made an appointment to meet him the next day in Portland at the Heathman Hotel. We met him the next [130] day. My wife was with us, and Mr. Tyler.

(Testimony of A. E. Gardner.)

We were given to understand that if we ever got anything out of our Monolith stock, we would be well to exchange it for stock in this mining company. I had not known Mr. Morgan prior to this conversation, except through correspondence; as he handled the Monolith stock for the Monolith Committee. Mr. Tyler gave us to understand that Mr. Morgan sanctioned this deal and had furnished him with names of the Monolith stockholders that would be allowed to exchange their stock for shares in the mining company. Mr. Tyler had written evidence of the mine and some of the assays and pictures of the mine. I think he did show me some papers that showed assay values. The money they were getting from the stock in exchange was supposed to go to develop the mine and put it in operation. I don't think any date was mentioned as to when we were to expect dividends from the mine—shortly, was about all there was to it. I did not have any gold mining experience prior to this deal. I did not visit the location of the mine and look it over. I don't think I saw any engineering report on the mine. I did not rely entirely upon what Mr. Tyler told me. I did exchange my stock. What I relied upon that caused me to exchange my stock was, I saw Mr. Morgan's signature on some of the stock certificates as president of the company, and I had all the confidence in the world in Mr. Morgan.

(Letter is produced) [131]

(Testimony of A. E. Gardner.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 56.") (Under stipulation as to being sent through mails and received and subject to Objection.)

#### Cross Examination

That was Midwest I had. I think Mr. Tyler represented then it was worth \$2.50. It didn't have par. I think about 1929 or '30, along in there is when I got it. I never received any dividends on it. Until Mr. Tyler told me it had some value, I had given up all hopes.

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#### LOUIS R. JACOBSON

a witness for the Government, testified as follows:

#### Direct Examination

I am a certified public accountant in California. I have been certified in this state. I first became acquainted with Mr. Shaw in October, 1934, in the Banks-Huntley Building. Mr. Gregory introduced me. Mr. Shaw at that time told me he needed someone to take care of his accounting matters and assist him in such projects as he then thought he was going to carry on. He didn't go into any detail at that time as to what he had in mind, but he felt he could make use of me in assisting him. That is about all.

We had general discussion as to what my work

(Testimony of Louis R. Jacobson.)

was and what my experience, and so forth, was. Nothing was said in this conversation about whether I would be a part-time employee or a full-time employee. No arrangement was made [132] as to compensation. I commenced work in October, 1934, immediately after our conversation. I put in full time, practically, in those offices.

There were no books or records of any kind maintained at the office, with the exception of some, I will say, existing records covering the original Monolith Stockholders Committee, which had ceased functioning at about that time.

While I wasn't given any instructions of any kind as to what to do by Mr. Shaw, I found it necessary to build up whatever records were necessary pertaining to the moneys that had been deposited in banks and disbursements, and both the accounts of W. J. Shaw, Frank S. Tyler and Edna Shaw, and I found that there had been certain collections made or, rather, a partnership agreement had been formed as between Frank S. Tyler and a group of individuals. They had turned in certain stock, Monolith Portland Cement Company stock, both common and preferred, and also cash, all of which information was shown on these various partnership agreements. There were two or three copies—I believe there were three copies—and from that information as shown on these lists I prepared the necessary schedules showing the amount that each and every

(Testimony of Louis R. Jacobson.)

individual had turned in to Tyler on the partnership agreement. I built up those entries on a columnar form white sheet book, a looseleaf binder.

The first part of the record, they had one or two sheets for the cash receipts and disbursements of that of Edna F. [133] Shaw. Then there was a section contained therein for the cash and receipts of Frank S. Tyler, covering his bank account at the California Bank. And then we had some sheets of W. J. Shaw's personal account, that is, receipts and disbursements, and those were prepared and maintained continuously during my connection with W. J. Shaw. There was also a section containing the names of the individual stockholders in the Consolidated Mines, showing their individual investments, whether it was Monolith stock or cash, or any other securities which they may have turned in, and then there was also a cash account, cash receipts and disbursements records for W. J. Shaw & Company, and analysis sheets of various kinds telling the amounts in money that had been expended for account of the properties. I commenced this work in October, 1934. But I worked back to January 1, 1934.

I think there was a bank account with the California Bank, Main Branch, on Spring Street, which account has maintained the deposits and disbursements of Frank S. Tyler. There also is an account there for W. J. Shaw. I believe Edna F. Shaw's

(Testimony of Louis R. Jacobson.)

account—yes, her account, was also maintained at that bank, at the California Bank, Main Branch. I don't believe there was any account at that time of W. J. Shaw & Company. A section of this so-called black book contained records for W. J. Shaw & Company. There was a record in the office when I arrived showing that a bank [134] account was maintained in the Bank of America at Jackson, California. That account changed back and forth—Mr. McKenry, Mr. Tyler, and I think McKiver. Now, I am not sure as to whether or not Gilbert had started working for the company in 1934. If he had, then the account would have been changed over to his name, because that account was more in the nature of a petty cash account; as they required money for miscellaneous expenditures, funds which have been advanced from the Los Angeles office to the Bank of America at Jackson.

During the time that I was making entries in this black book, I did not have any occasion to make any entries in there pertaining to the Consolidated Mines of California, a corporation. Consolidated Mines of California, a corporation, after its incorporation did open a bank account. I believe they had but one in Los Angeles. There was a record shown in the black book where moneys were expended and reflected in the account, for and on behalf of the mine up at Calaveras County. Those moneys appeared in the Frank S. Tyler account, and also Edna F. Shaw account. I reconciled the bank



(Testimony of Louis R. Jacobson.)

account after I got through making all the entries in the cash book. In reconciling the bank account, I made use of check stubs, cancelled checks, deposit slips which I found in the safe, and also the bank statements. After I had finished just using those records in making my reconciliation in opening my book, I put them back in the safe. They were kept there, [135] to the best of my knowledge. I actually opened the books of account for the Consolidated Mines of California, January 1, 1936. I opened and maintained for that corporation commencing on January 1, 1936, cash receipts, cash disbursements, journal, payroll records, general ledger. I had been working there approximately a couple of months in '34 and all of '35; that is about 14 months before I opened the books for the corporation. Before I opened the books for the corporation, I know of my own knowledge the Consolidated Mines of California had been incorporated. And had received a permit from the Commissioner of Corporations of California. And certain transactions had gone on in connection with that permit. So far as the issuance of stock—it is my recollection that a second permit had actually been issued along later in November, I believe it was, before I opened the books.

Mr. Norcop: And in that connection we have here the records of the Corporation Commissioner, and I think it would be proper rather than to ask the witness to refer to records—you have seen them,

(Testimony of Louis R. Jacobson.)

Judge Montgomery—I am going to refer to the first permit.

The first permit bears the date February 15, 1935, and recites that “this permit is issued upon the following express conditions: that a true copy of this permit be given to the subscriber prior to the taking of subscriptions,” and it recites the name of the corporation and states that the authorized [136] capital of \$500,000 is divided into 2 million shares at a par value of 25 cents each, none of which has as yet been sold or issued.

It goes on to say, “The corporation has not yet commenced business and, therefore, has neither assets nor liabilities,” that it was organized for the general purpose of engaging in the mining business and particularly to acquire through purchase contracts two groups of mining properties in Calaveras County, California.

The first group is described as the McKisson property and covers three unpatented mining claims situated in the Glencoe mining district known as the Pay-Day claim, Tunnel Site Claim, and West Extension Mine. There is a balance due on the purchase price of these claims of \$8,000 payable October 27, 1935.

Then it mentions the second group of mines which we know from the evidence as the Porteous claims, saying there is a balance of \$14,000 due on the purchase price of those claims which is payable out

(Testimony of Louis R. Jacobson.)

of 15 percent of the gross returns. It refers to a report by S. E. Chaney, a mining engineer, and indicates that these properties are worthy of development. "Applicant represents that sufficient ore has been blocked out to enable it to commence milling and shipping from the McKisson property immediately."

"Applicant proposes to issue 900,000 shares to Frank S. Tyler, who with his associates, has already expended \$26,588.- [137] 49 in developing the aforesaid properties, in consideration for the transfer and assignment to applicant of all his right, title and interests therein and thereto.

"In order to provide capital with which to fully develop the properties, including the purchase price of the McKisson property and the erection of a mill thereon and the erection of a mill and equipment on the Mineral Lode and Grand Prize claims"—those being the Porteous claims—"applicant proposes to sell and issue 320,000 of its shares at par, for cash, subject to a selling expense of not to exceed 20 percent of the selling price."

Then here is what was granted, the granting part of the permit, naming the corporation again:

"It is hereby authorized to sell and issue its securities as hereinbelow set forth:

"1. To sell and issue 106,352 shares of its capital stock to Frank S. Tyler as partial consideration for all of his right, title and interest

(Testimony of Louis R. Jacobson.)

in and to the mining claims and other assets described in its application, first, to be transferred and assigned to the applicant, subject to liabilities not exceeding in the aggregate \$22,000, and to current taxes not delinquent, rights, easements, reservations and restrictions of record.

“2. After the applicant shall have sold, [138] received the consideration for, and issued all of the shares of its capital stock in accordance with the issuance paragraph 1 hereof, to sell and issue an aggregate of not to exceed 320,000 shares of its capital stock at par, for cash, lawful money of the United States, for the uses and purposes recited in this application, subject to an aggregate selling expense of not to exceed 20 percent of the amount received in cash on account of the selling price, including commissions payable only to duly licensed brokers or agents.

“3. Whenever and as often as a share or shares of its capital stock are sold and issued in accordance with issuance paragraphs 1 and 2 hereof, to issue a certificate or certificates evidencing a like number of shares of its capital stock to Frank S. Tyler, not exceeding in the aggregate to him, however, 426,352 shares of its capital stock, as further partial consideration for the assets described in issuance paragraph 1 hereof, subject to his right to receive an addi-

(Testimony of Louis R. Jacobson.)

tional 367,296 shares of its capital stock as full and final consideration therefor, under future permits when and as granted by the Division of Corporations." [139]

(By the Witness)

No action was taken by the corporation under this permit, insofar as any of the books and records of the company were concerned. No stock was issued or sold.

Mr. Norcop: Now, we refer to the second permit, which is dated July 5, 1935, several months later, and omitting now some of the formalities, the permit comes down to a point very quickly:

The corporation "is hereby authorized to sell and issue its securities as hereinbelow set forth:

"1. To sell and issue 150,000 of its no par value shares to Frank S. Tyler as partial consideration for the transfer and assignment of all right, title and interest in and to the certain mining claims and mining equipment described and referred to in the applications heretofore filed by the applicant.

"2. To sell and issue 300,000 of its no par value shares to Frank S. Tyler as full and final consideration for the property referred to in paragraph 1 hereof. This permit is issued upon each of the following conditions:

"(a) That none of the shares authorized by paragraph 2 hereof shall be sold or issued

(Testimony of Louis R. Jacobson.)

[140] unless and until the applicant first shall selected an escrow holder"—and there will be no point made of that. They did.

“(b) That none of the shares herein authorized by paragraph 2 hereof shall be sold or issued unless and until Frank S. Tyler shall have executed an agreement in writing with said applicant, and filed a copy thereof with the Commissioner of Corporations, whereby he or they shall in effect agree for themselves, their successors, administrators and assigns as owner of 300,000 shares herein authorized to be issued to him or them, to waive his or their rights to participate in any distribution of capital assets of the applicant, while said shares shall have been required to be held in escrow \* \* \*

“(c) That none of the shares authorized by paragraph 2 hereof, shall be sold or issued unless and until Frank S. Tyler shall have executed a written waiver, and filed a copy thereof with the Commissioner of Corporations, for and on behalf of himself, his successors, administrators and assigns, wherein he waives, as the owner of 300,000 shares herein authorized to be issued to him under paragraph 2 hereof, his right to the payment or accrual [141] of any dividends in any year, while said shares shall be required to be held in escrow, until such

(Testimony of Louis R. Jacobson.)

time as all other shareholders shall have received dividends equal to the entire amount of their investment.”

That unless sooner revoked, suspended or extended this permit shall expire on the 5th of January 1936. That is some seven months later.

(By the Witness)

In connection with that second permit which authorized the issuance of 300,000 shares to Mr. Tyler to be placed in escrow, that was done. In connection with the authority of that permit to issue 150,000 additional shares to Mr. Tyler—that was not done, in the manner outlined in that permit. 60,000 shares, as I recollect, was issued to Frank S. Tyler and the balance was issued to various individuals who were members of the partnership. The balance of the 150,000, they were issued in accordance with that certain partnership agreement showing the names of the respective interests which they had. That partnership agreement recites that 40 per cent of the assets of the partnership will be owned by Mr. Tyler in consideration for certain things he was to turn over, and the other 60 per cent belonged to the partners who had subscribed their names at the foot of the document.

This 60,000 shares is exactly 40 per cent of the 150,000 [142] shares, so that left the balance of

(Testimony of Louis R. Jacobson.)

90,000 shares—which would be apportioned to the 60 per cent of the partnership. I have seen the individual stock books, but I didn't check any of them though. Upwards of 67,000 plus shares were issued to individuals who had been partners—some 125 of them, I believe—in the partnership with Mr. Tyler. I don't know what became of the balance at that particular time. I don't believe the issuance of all of the stock at that particular time had been completed when we received an order from the Commissioner, that the issuance of the stock was in error. The third permit, after some hearings before the Commissioner, was issued. I don't believe they were printed.

Mr. Norcop: Now, this says, "Permit No. 3"—same corporation—"is hereby authorized to sell and issue its securities as hereinbelow set forth:

"1. To sell and issue to the persons named in an instrument designated as 'Exhibit A' filed on February 15, 1936, an aggregate of not to exceed 90,000 of its shares for the purpose and consideration recited in the original application.

"This permit is issued upon each of the following conditions:

"(a) The shares herein authorized to be sold and issued shall be sold and issued only concurrently with or subsequently to the surrender [143] and cancellation of certificates evi-



(Testimony of Louis R. Jacobson.)

dencing the ownership of 90,000 shares heretofore issued in non-conformity with the permit granted to applicant on July 5, 1935.”

Mr. Norcop: I now come to Exhibit A which the permit just referred to as being a part of the application, and upon which basis the authority was granted to issue 90,000 shares, and I find that that Exhibit A is six pages long, five full ones and about a third on the sixth page, listing not alphabetically but names headed “Name,” and then below that comes the name of the individual, and over to the right “Number of Shares Desired to be Issued,” and then the number of shares, and those total 90,000 shares.

(Books containing Certificates Nos. 1 to 100, Nos. 101 to 200, Nos. 201 to 300, Nos. 301 to 400, Nos. 401 to 500, Nos. 501 to 625, and Nos. 626 to 750 were marked Government’s Exhibits 60, 61, 62, 63, 64, 65 and 66 for identification.)

By the Witness:

The books of record of the Consolidated Mines of California were opened by me personally by February 1, 1936, and they were kept by me. During the period I kept them, the Young lady in the office, I believe Miss Stroatman, assisted in writing up the stock ledger and the stock journal and the writing up of the stock certificates, under my direction. I checked them up to see from time to time that it

(Testimony of Louis R. Jacobson.)

was being done in accordance with the way I wanted to have it done. (Examining book) These are the general journals, of the [144] Consolidated Mines of California, containing in the front part of the record the payroll sheets covering the employees at the mine proper, a record of the cash receipts, a record of the cash disbursements, and the journal.

Starting with the payroll of January 1936 and up to and including July of 1936 the payrolls were made up at the Los Angeles office; and then commencing with August 1st, with the month of August, the payrolls were prepared at the mine and copies sent to Los Angeles. And then I have then inserted in the book here following the other payroll records that have been kept in the Los Angeles office. I have examined this book in the last few days, and found my handwriting through a great portion of it. I see some entries as late as August of 1937, although I stated before that I left the early part of August; so I must have been here as late as this period. August 16th, the last entry I have in this book, 1937. I did some part work there. Mr. Shaw requested me, after they had their own bookkeeper, to come out to the office and assist in different matters. When I left their employ, their offices were in the Bay Cities Building at Santa Monica. When I came to work for the concern, Miss Florence Stroatman was not there. She was there during quite a period while I was working there at the offices in the

(Testimony of Louis R. Jacobson.)

Banks-Huntley Building. She was the only full time lady secretary in the office. Three rooms were there in the offices in the Banks-Huntley Building, on the [145] 11th floor. (Stipulated that these are the books and records of the Consolidated Mines of California, kept in the due course of business under the supervision of this duly hired accountant, Mr. Jacobson.) (That stipulation covers the general ledger, stock certificate journal and the stock ledger.)

Miss Stroatan wrote up the greatest part of the stock certificate journal, under my supervision, and checked it so that I know it is true and correct. Whoever was in the office at the time when the Stock Certificate Ledger was written up, and that also applies to the stock journal, was written up under my supervision and direction. I made checks to see that it was a proper copy and so forth.

(The journal referred to was marked "Government's Exhibit No. 67 for identification.")

(General Ledger.)

(The document referred to was marked Government's Exhibit No. 68 for identification.")

(Stock Certificate Journal)

(The document referred to was marked "Government's Exhibit No. 69 for identification.")

(Testimony of Louis R. Jacobson.)

(Stock Ledger)

(The document referred to was marked "Government's Exhibit No. 70 for identification.")

In the period I was working in the offices in the Banks-Huntley Building, Mr. J. A. Hughes, who is an accountant for the Securities and Exchange Commission, visited the [146] offices. He asked permission to examine certain of the records of the Consolidated Mines of California. I think he had access to the books—Stock ledger (Exhibit 70). I believe that he worked on that book at the office.

During the time that I was working for the company there in the offices at the Banks-Huntley Building, the black book was maintained throughout that that time. I was making the entries in it, with one exception: The section pertaining to the amount of stock that was to be distributed to the various interested parties in the mine, and that was written up by someone else in the office under my supervision. It was contained in that book. When the company transferred to Santa Monica the black book was present in the offices of the company in Santa Monica in the Bay Cities Building. Then I discontinued my employment with the company. I saw the book down there in March of 1938. It was in the offices of W. J. Shaw of the Bay Cities Building. I was there when Mr. Claypool, an agent of the Income Tax Department, was there. He and I saw the

(Testimony of Louis R. Jacobson.)

book together. It was not the occasion that Mr. Hughes was down in the same building of the same offices of the same people with me and saw the book. That was a different time. I believe it was prior to the March date which I stated. When Hughes and I were there, we both saw the black book. I believe Hughes called me or we went out there together. I believe that Mr. Shaw was in his office. Mr. Hughes then saw the black [147] book. I got Mr. Shaw's permission to give him the black book. I was no longer connected with the company. I had gone down to assist Mr. Hughes in the preparation of some work. The book was produced from the same safe we had previously had up here in the Banks-Huntley Building. Mr. Hughes was there, on that occasion, for several hours. I was there also. I am of the opinion now that Mr. Hughes had previously been there and had made certain transcripts of that black book on his own hook. At a later date or at the date which I am stating here, he requested that I come up and assist him in checking back some of his figures. So the schedules that he has were not prepared in my presence. I didn't check that book as to determine whether the other accounts which I had previously mentioned were still within that book, but from the size and contents and the size of that book I will say that the book was complete. I did glance through it casually, I will say, and saw within that book the accounts of W. J. Shaw in

(Testimony of Louis R. Jacobson.)

addition to the Tyler account, and whether or not the records of the list of the old stockholders were in there, I can't say at the present moment, but I do know that W. J. Shaw's cash account and W. J. Shaw & Company's accounts were within that book at that time.

While I was working up in the offices in Los Angeles in the Banks-Huntly Building and was making records and entries in this black book, the receipts of moneys that were [148] received from the sale of Monolith and Midwest stock were recorded in that book, in the account of Frank S. Tyler. If any sales were made for cash and not for an exchange of stock of Consolidated for Monolith or Midwest, those receipts were reflected in the Frank S. Tyler account. The money received from Miss Pew was recorded in the account of W. J. Shaw, so I would have to correct my former answer to that extent; but my recollection is that it was later transferred over to the Tyler account.

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PARIS B. CLAYPOOL,

a witness for the Government, testified as follows:

Direct Examination

My occupation is Internal Revenue Agent, in the Internal Revenue Collectors Office at Los Angeles. I was so engaged in the year 1938. I have been so engaged since 1919. In this area since 1930. In 1938 I

(Testimony of Paris B. Claypool.)

visited the offices of W. J. Shaw and other persons in Santa Monica in the Bay Cities Building. It was late in August of 1938 and during the month of September of 1938. I was there numerous times. On the first occasion when I went down there, I saw a bookkeeper. Mr. Goeing is the name. I did not see Mr. Jacobson on my first visit. On my first visit I was not shown any of the books or records, any of the books or records of the Consolidated Mines of California, nor any of the books or records of Mr. Shaw. I made arrangements with Mr. Shaw, and fixed a date for a future appointment. When [149] I returned to keep that appointment Mr. Goeing and Mr. Tyler were there. Mr. Shaw was there part of the time.

The first records that were made available was the black memorandum book, looseleaf book, about 8x10½ inches in size. It contained a number of accounts, and also saw cancelled checks of W. J. Shaw & Company and Jumbo Consolidated Mines, and the Consolidated Mines, I believe the name of the company is, and cancelled checks of Shaw and of Mrs. Shaw. There was in that book an account, a Jacobson special account. There was in it the Tyler account. There was in it W. J. Shaw & Company. And there were individual accounts of Shaw and of Mrs. Edna Shaw. There may have been another account. I examined that book in some detail over a period of days. I made notations in my work papers

(Testimony of Paris B. Claypool.)

of various entries in the various accounts in the books, particularly with reference to the bank accounts of Shaw & Company and of the mining company and of the individuals in the Tyler account.

There was an account in that book that gave a listing of the proceeds received from the sale of Midwest and Monolith stock which had been received from former stockholders of those companies in exchange for Tyler partnership interests or Consolidated Mines interests. I do not recall the terminology of that particular account. Proceeding with my investigation, I was supplied with information from Mr. Jacobson in the way of working sheets or papers to [150] supplement my investigation.

Mr. Norcop: There are a total of 18 of the accounting sheets on the yellow paper, some of them 8x11½ and some of larger size, and at the very back there is another document that I think you had better see. I haven't examined it very closely. (Passing document to Mr. Montgomery.)

By the Witness: He loaned me other papers but these are all that I have. I returned the other papers to him.

(The document referred to was marked "Government's Exhibit No. 71 for identification.")

(By the Witness.)

I never had possession of the black book outside of the office. That was all returned to either Mr.



(Testimony of Paris B. Claypool.)

Tyler or Mr. Goeing, who happened to be in the office at that time.

Mr. Jacobson was present on one occasion during the times I was down there at the offices in Santa Monica inspecting this book and other records. Mr. Shaw was not present.

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LOUIS R. JACOBSON

resumed the stand and further testified as follows:

Direct Examination (Continued)

The transaction with Mrs. Pew was not reflected in the Frank S. Tyler account in the black book. A transaction of Mrs. Laura I. P. Franklin was not reflected in the Frank S. Tyler account. With respect to a transaction of a gentleman by the name of Smith—the property that was received was not recorded in the black book, so far as any cash transaction. It was shown in the black book for the consideration received in the back part of the book. [151] But not in the Frank S. Tyler account.

I testified this morning that it was my recollection that I saw Claypool down there in March 1938. If Mr. Claypool has his records showing it was in September, I will state it was in September of '38. (Examining document.) My recollection of this top schedule is that Mr. Hughes presented it to me at Santa Monica in his meeting there with me and

(Testimony of Louis R. Jacobson.)

certain questions arose as to the propriety of having it in either one column of the other, and that is the only reason I state that I definitely remember this sheet, because of that particular discussion. Now, as to the figures themselves, they were prepared by Hughes. I can't say whether, unless we can tie them in some other record, I can't at this moment say they were the exact figures. I don't question that they were properly prepared from that black book. I didn't prepare them. The sheet I have just been referring to is headed "1934,"—it has the total receipts of Frank S. Tyler. As to this second sheet—I have seen the makeup of those sheets similar to the ones that I saw. I know that I saw them at the Santa Monica office, on that same visit that I referred to in regard to that Tyler sheet for 1934, when Mr. Hughes was down examining the black book. That sheet is headed "Frank S. Tyler Summary of Cash Receipts Showing "Source From Which Received." And it has 1935, 1936 and 1937. As to the third sheet—we had that sheet at the time. It represents the [152] cash disbursements of Frank S. Tyler's account at the California Bank for the years '34, '35, '36 and '37, all of which was prepared by Mr. Hughes.

(The documents referred to were marked "Government's Exhibit No. 72 for identification.")

(Testimony of Louis R. Jacobson.)

(Examining sheets) These sheets are in my handwriting. The first one covers 1934. That sheet was compiled from the Frank S. Tyler account in the black book. It was prior to the time of my leaving. Those are just work sheets, more in the nature of cash receipts and disbursements for the year 1934 of the Frank S. Tyler account. The second sheet is in my handwriting, and it is headed "1935". This sheet reflects the cash receipts and disbursements of Frank S. Tyler for the year 1935 starting off with the balance of the beginning of the year and ending with the balance in the bank at the end of the year. That information was compiled from the black book.

#### Voir Dire Examination

There were other places than the black book from which I compiled information as to the receipts and disbursements during these years. That is not reflected in these sheets. These sheets are incomplete; in fact it only shows the Frank S. Tyler account.

(Objection Overruled.)

(The documents referred to were received in evidence and marked "Government's Exhibit No. 73.") [153]

#### Direct Examination (Continued)

As to the receipts entering the Frank S. Tyler account or entering the W. J. Shaw account—there wasn't any great distinction as between the two accounts insofar as the disbursements were con-

(Testimony of Louis R. Jacobson.)

cerned, but insofar as receipts of the Tyler agreement and on the subsequent sale of the Consolidated stock of Tyler's stock, with the exception of the Pew sale for \$30,000, the sale to her of Consolidated stock, I attempted to keep all such receipts in the Tyler account. That account was in the beginning at the head office of the California Bank. Frank S. Tyler and W. J. Shaw could sign checks on that account. I think the checks would show that Tyler signed most of them. I might say that the way Shaw did sign them would be "Frank S. Tyler by W. J. Shaw."

In that Tyler account were deposited the proceeds received from the disposition of Monolith and Midwest shares, in particular, the proceeds that came from the disposition of Monolith and Midwest shares that had been brought in from the shareholders who later acquired interests and exchanges therefor in the Tyler agreement and Consolidated Mines. The brokerage houses that handled the disposition and sale of those Monolith and Midwest shares for the organization were Pledger & Co. and Fastnow. That was where most of the Midwest and Monolith was sold. Those trading accounts were carried over at Pledger & Company in the name of Frank S. Tyler. An account was carried in my name there [154] for a short period of time, and also in the name of Florence Stroatman. She was the lady secretary in the office. The accounts were

(Testimony of Louis R. Jacobson.)

opened in that fashion with Pledger & Company under the direction of W. J. Shaw. When sales of Monolith and Midwest stock were made in my account, with the Pledger & Company and I receive a check or other evidence of the proceeds back in my name, I endorsed them and deposited them in the account of Frank S. Tyler, to the best of my knowledge. The Florence S. Stroatman checks that were proceeds from the same source, Pledger & Company, were handled after they were received by her. I presume, with respect to Frank S. Tyler, they were deposited to the account of Frank S. Tyler. If we needed money we would go up there and generally get a check for either the round amount of stock that had been sent over to them or take over a block of stock to the broker and we would get a check from him to cover those sales made by the broker. "We" includes Tyler or Miss Stroatman and myself. At most instances I would do it under the direction of W. J. Shaw. The other times as we required money, Frank S. Tyler and I would discuss it and we would take, he or I or Miss Stroatman would take, this stock up there as we required money. The certificates of stock were always available in the vault and the market was made for those sales. The other broker was Fastnow. I think in the Fastnow there was only one account, in the name of Frank S. Tyler. As to this first batch of [155] sheets which were marked for identification Exhibit 72,—whether I agreed

(Testimony of Louis R. Jacobson.)

or disagreed with Mr. Hughes' headings or allocations for these subdivisions on the various sheets. I can't answer as to this first sheet for '34, but I will say that the sheets for '35, particularly disbursements, this is the manner in which I kept the breakdown for month by month in that black book. I had these headings in the black book that are reflected at the top. It would appear that that would be about the manner in which I would distribute those accounts for the individual months, more in the nature of a summary for the total receipts as shown by the individual days during that month. I discussed those subjects with Mr. Hughes when he was compiling those accounting sheets. I didn't stay with him continuously while he was working, but he asked me certain questions from time to time, and it is only to that extent.

Mrs. Pew's transactions were reflected in W. J. Shaw's account. It may have been in W. J. Shaw or W. J. Shaw & Company, although my recollection is that it was W. J. Shaw.

I received compensation while I was working there from late October '34 to the time I left in '37. W. J. Shaw and the committee paid my compensation.

When I severed my connection with Mr. Shaw and the Consolidated Mines, they removed their offices to Santa Monica. All of the cancelled checks and all of these accounts thereafter, month by month, were put into the safe. [156] A considerable number of the checks were placed—the old checks

(Testimony of Louis R. Jacobson.)

were taken out of the safe and put on the shelves in the room there, on these little cabinets. They were wooden cabinets, that is, they were built-in affairs in these various offices in the Banks-Huntley Building. When they removed all the checks and fixtures and so on from the office, those checks were put into boxes. What became of them or whether they went into the safe or where they were put after they went to Santa Monica, I have no knowledge. I did go down there after the move and work there for a short time. I might say from the time Mr. Shaw moved his office to Santa Monica, it was my intent then to move in Los Angeles proper and carry on practice, and he told me I could use that room which I was in, and as long as the rent had been paid for, and my clients then would continue there, and open my own offices. It was just about two or three weeks subsequently that he asked me to come out there and assist him there. I didn't see any cancelled checks either on my first visit out there after the move or later. Whether they were put into the safe or kept in boxes, they all had been reconciled, and there was no further need of examining those checks as far as I was concerned. Immediately after they moved to Santa Monica I believe Mr. Shaw obtained the young man there to take care of the books.

I was not a stockholder in the Consolidated Mines of California. I was not an officer or a director.

(Testimony of Louis R. Jacobson.)

I don't know of my own knowledge of any stockholders' meetings of the Consolidated Mines of California that have been held. [157a]

Receipts from sales of Midwest stock or Monolith stock were continuously deposited to the Frank S. Tyler account. That was the principal source of revenue for the Frank S. Tyler account. I received directions while I was employed from October, 1934 to the time I left in 1937, in the main, from Mr. Shaw. The signature or authorization requisite to release Monolith or Midwest stock from the depository of the Pacific National Bank in San Francisco was that of Mr. Shaw. During the entire time that I was there, it is a fact that even if a stockholder of Monolith and Midwest sent into the Pacific Bank there their depository receipt with instructions to send them their stock, that they couldn't obtain it without Mr. Shaw's signature.

Mr. Alexander was the salesman who went out to solicit the Monolith-Midwest stockholders on the Tyler agreement. I think there was one other whose name I don't recollect, but he made very few deals. I don't know whether Milt Alexander solicited the Midwest stockholders directly on the Tyler agreement. When the Tyler agreement was succeeded by the Consolidated Mines of California, Charley Wohlberg at that time was soliciting the certificate holders, and Mr. Tyler was out with Charley Wohlberg making those solicitations.

The Tyler agreement had practically been con-



(Testimony of Louis R. Jacobson.)

summed almost in its entirety before I came into the picture in October of 1934 with very few exceptions, so I can't say [158] who the other solicitors were with respect to that Tyler agreement.

I sent Mr. Alexander checks from time to time on the committee account. That was when they started the Midwest suit and he was bringing new members or reviving the committee. My recollection is that he did get some compensation from Frank S. Tyler in addition to that of the committee, and that compensation from Frank S. Tyler would be on any possible deals that he might consummate. That would be reflected in the Frank S. Tyler account. To the best of my knowledge, Morgan did not go out soliciting, although I knew he had made contacts with a number of them. I never had any discussions with Mr. Shaw as to why he was not an officer or director of the Consolidated Mines of California, nor did he volunteer any statement to me on that subject. As to any cash disbursements made on the mine, McKisson Mine, and the other prospects up there, which are not reflected in the Frank S. Tyler account in the black book or the corporation books of the Consolidated Mines—I know of a certain memorandum exists that shows the disbursement for account of the mine to the extent of about \$7,000. That has not been recorded either in the Frank S. Tyler account or that of the Consolidated Mines. That was '35 and '36; maybe altogether in '36. This memorandum, I believe, is in the pos-

(Testimony of Louis R. Jacobson.)

session of Mr. Hughes, and I happen to have a copy of it in my file. It was moneys that W. J. [159] Shaw had personally advanced to the Consolidated Mines or for the account of the Consolidated Mines. There is in the books of the Consolidated Mines of California an entry showing the valuation placed upon the mines, under account of Mine Property. Account No. 9. "Mine Property, Account No. 9." Under date of February 1936, journal page 1, a charge, which is a debit, \$355,000. That is in my handwriting. Before I made that entry, I discussed that with Sam Chaney, Reed Sampson, Tyler, Morgan, and I believe I also discussed the matter with Mr. Shaw. That figure was covering all of the properties; that is, the Porteous group as well as the Lytle group. There is an entry in the books when they were opened for the corporation, that is, the Consolidated Mines of California, showing indebtedness against these mining properties on account of their unpaid purchase price, under Account No. 31 headed "Contracts Payable." Under "Liabilities." That is in the year 1936. Starting with February. There is a credit that is set up there or a liability set up there from journal page 1, \$22,000. The discussion before I made that entry of that figure of \$22,000 was with Mr. Tyler and Mr. Morgan as to what you might call the propriety of setting up that liability on the books of the corporation. We discussed this matter pro and con, and after several

(Testimony of Louis R. Jacobson.)

discussions with both Morgan and Tyler, I took it up with Mr. Shaw and, at his request, we referred it to Mr. Guy Graves. [160]

Both Tyler and I went up to see Guy Graves, and the Attorney Graves stated that, in his opinion, it was a liability of the corporation, or should become a liability of the corporation in the transfer of property from Tyler to the Consolidated Mines.

It wasn't a matter or a statement to the attorney of an accounting matter at all. I told him the interpretation of that contract. Referring to the Tyler partnership agreement: I was of the opinion and felt that it was a Tyler obligation. I took the matter up after discussing the matter with Mr. Morgan and Tyler and they couldn't come to any definite decision. One said one thing, and the other said another. I took the matter up with Mr. Shaw and he said it was purely an interpretation of the contract and it should be decided on by Mr. Guy Graves who had written this agreement, and Tyler and I went to see Graves and Graves gave as his opinion that that \$22,000 would be an obligation of the corporation, and that it was purely a legal matter and in accordance with his opinion it was set up as a liability of the corporation. My own viewpoint in the matter didn't make any material difference. I had to base it entirely on Guy Graves' opinion. (Examining documents) Exhibit 71 for identification.

(Testimony of Louis R. Jacobson.)

I come across one sheet that isn't in my handwriting. That is three paragraphs of typing, and is headed "July 1, 1935." They might have been separate sheets at the time. Either he or I might have [161] pinned them together. This typewritten sheet was a part of the loose papers and they might have all been pinned together at that time. These two shouldn't be in that file.

You hand me now two sheets on paper in my handwriting, but they were prepared a few days ago in your office, compiling the income tax returns. And this is typed. As to when this carbon statement was handed to Mr. Claypool—I believe these are the sheets that he had when he was checking the income tax return at the Santa Monica office. I prepared it from the black book. With respect to the first sheet of this exhibit headed "McKisson Mines—Frank S. Tyler Agreement,"—I prepared that sheet from the black book and I used the black book as the basis of preparation of this white sheet. I do not know of any other record that I made use of in connection with the preparation of it. The next sheet was prepared from the black book, taking into consideration Frank S. Tyler's account, W. J. Shaw and W. J. Shaw & Company, and it was prepared for income tax purposes, and it is headed "W. J. Shaw." And the sub-heading is "Summary of Income and Deductions for Income Tax Purposes for the Year Ended December 31, 1936." I won't make any answer as to whether this next

(Testimony of Louis R. Jacobson.)

sheet was prepared from the black book or not. It is a memorandum of some sort and served no purpose whatsoever. I might have started compiling it and dropped it because it doesn't mean anything to me. This next sheet is a summary of certain income received by [162] W. J. Shaw from Mrs. Pew, and also from the settlement on the Monolith suit. There is an item here for \$13,500, "Said consideration received from"—and didn't finish it. It is more in the nature of a memorandum that I compiled for some purpose, but it was compiled from the black book, and the heading is "Funds Received from"—"Nellie Pew," but it should have been amplified, because I had other funds in addition to that. This next sheet is a memorandum that certain distribution of expenditures which were made by me out of the L. R. Jacobson trustee account, and taken from the black book. The summary of receipts and disbursements account was contained in the black book.

The next sheet is headed "W. J. Shaw-Security Bank." The break down of the memorandum here doesn't mean much so far as—it might have been of some purpose at the time it was prepared, and represents the break-down of disbursements out of the W. J. Shaw-Security Account. It has no date on it. That was prepared from the black book as well.

This sheet you are showing me is headed "W. J. Shaw-Security Bank." This is a break-down of W. J. Shaw account in the Security Bank of disbursements, and it isn't dated. It is poor practice, I know,

(Testimony of Louis R. Jacobson.)

not to date these, but, at any rate, it wasn't done. That was taken out of the black book.

The next sheet is headed "W. J. Shaw & Company-California Bank, 1936."

It is a schedule of the break-down of the disbursements [163] of W. J. Shaw & Company account, California Bank, for the year 1936 and was prepared from the black book.

The next one is Frank S. Tyler, and is headed 1936.

As to the next sheet Lewis R. Jacobson trustee account, October 16, 1936, to December 31, 1936. There is another sheet that should be with it. There were two sheets there. This is carried on from December 31, 1936, to the time when the account was closed. This account was opened, you see, in October 16, 1936, to December 31, 1936, and an account carried in my name as trustee at the Bank of America at Seventh and Spring and represents the disbursements made from that account. The other sheets had the receipts. I think it was a short sheet I had. I saw it the other day. Well, it is a continuation of this sheet for the remaining period, but the record of these disbursements was carried in the black book. I would say they came out of the black book, all these memorandums. I don't know what it is. As to this one—The Security Bank—that is also taken out of the black book. These are little scraps of papers that I don't know where they came from. Here is an attempt on my part to sum-

(Testimony of Louis R. Jacobson.)

marize the receipts of the Jacobson account, Tyler and W. J. Shaw account for a period, but, as I say, those were memorandums. The next three sheets are blanks.

This sheet headed "Sources of Income," doesn't seem to have any connection, although the information there would have been prepared from the black book. I prepared this [164] typewritten schedule from the black book. (Examining document). This typewritten statement dated Monday, July 1, 1935, is a memorandum.

Since my trip to Santa Monica, which Mr. Claypool fixed as being in late August and early September of 1938, I have had discussion with Mr. Shaw relative to the black book. In the case of civil action that was carried on between Morgan and Shaw I did ask about that black book. I believe it was the latter part of '39 when I was discussing that with Mr. Shaw. His attorney was present. I just asked him whether he had the black book with him, as I desired to get some information therefrom in respect to that L. R. Jacobson trustee account which was involved in this action. His reply was that he didn't know where that black book was. W. J. Shaw paid the rent for the offices in the Banks-Huntley Building. With reference to the Bay Cities Building in Santa Monica—I don't know. All of the ventures that were represented by accounts in the black book were conducted from the offices in the Banks-Huntley Building. I have made a sum-

(Testimony of Louis R. Jacobson.)

mary from these books of the total receipts from the sale of stock of the Consolidated Mines of California. It is these two here (indicating). These are Exhibit No. 73. I prepared those. These receipts themselves would be represented by the liquidation of the various other securities that would have been received from both—on the original partnership agreement and then the subsequent sale by Frank S. Tyler of [165] his personally owned stock.

In 1934 from the Monolith stock which had been received by Frank S. Tyler on the partnership agreement there was obtained the sum of \$41,822.69, and the cash that was turned in by the members of the partnership on the Tyler agreement amounted to \$5,237.

The other items represent the sundry receipts of \$998.78. The total for that year would be the addition of those three figures—\$47,059.69, for the year 1934. In 1935, consideration received from the sale of securities, which securities were received by Tyler on the sale of his personally owned stock, was the sum of \$64,971.10.

The next item in the amount of \$499, marked "Dividends," represents the dividends that were accrued on the Monolith preferred stock up to the time they were sold.

Then there is an item of \$958.71 which is represented by ore sales of the Consolidated Mines. That was a test run they had in '35, which amount, however, was subsequently transferred to the books of



(Testimony of Louis R. Jacobson.)

the Consolidated Mines, the corporation, and Tyler was charged with that amount.

Then there are some miscellaneous receipts of \$5,270.88 which would not be any part of the mine deals.

Then there is \$1175 received by Tyler on the Monolith Committee and, as I recollect, this amount would be reimbursed to him for certain expenditures that he had made for the benefit of the Monolith Committee, and the disbursement on [166] this sheet would indicate that Tyler was advancing certain sums for the benefit of the committee.

Then there is an amount of \$33,351.74 that he received from W. J. Shaw.

Then in addition to the \$64,971.10 received by Frank S. Tyler on the sale of securities which he had obtained on the Consolidated Mines stock, there was a sum of \$10,797.72 which came in as cash representing purchases of the Consolidated Mines stock. That gives a final total of receipts for the year of \$117,024.15.

Then there is an item directly under that, the balance at January 1, 1935, of \$2,363.28, giving a grand total of receipts, and the balance carried forward at the beginning of the year, of \$119,387.43. On this same exhibit, starting with 1934, the amount advanced to the Consolidated Mines \$14,528.42; office expenses \$2,778.27; amount transferred to W. J. Shaw, \$75,576.53.

(Testimony of Louis R. Jacobson.)

Under receipts for 1934 there is an amount of \$68,415 which Mr. Shaw turned over to Frank S. Tyler and represents his private deals on the sale of Monolith stock in the amount of \$30,015 and various loans that he had made which he subsequently repaid in the amount of \$38,400, which totals \$68,415, against which Tyler returned to him \$75,576.53.

Under disbursements for 1934, there is an item of Frank S. Tyler and office \$4,660.09; purchase of stock, \$7,681.50; salesmen's commissions \$2,155.91; Monolith committee \$494.03; [167] and under the caption "Sundries" \$5,276.32; contra items \$858; miscellaneous \$110.22; totaling \$6,235.54; making a grand total of disbursements for the year 1934 of \$114,110.29, leaving a balance as of December 31, 1934, of \$2,263.18.

For 1935 amount advanced to mine, \$24,069.36; Frank S. Tyler, \$16,600.51; W. J. Shaw, \$47,709.84; office expenses, \$5,998.85; purchase of stock, \$7,875.91; advance to Monolith committee, \$3,830.30; C. C. Shockley deal, \$6,107; under "Sundry-notes paid," \$4,986; interest \$140.82; contra, items, \$1,373.50; miscellaneous \$195; total \$6,695.32, making total disbursements for 1935 of \$118,887.09; leaving a balance in bank of the December 31, 1935, of \$500.34.

I did not prepare any similar schedule to this for the year 1936. In the previous year when I came to these two items of Shaw and Receipts and

(Testimony of Louis R. Jacobson.)

Shaw and Disbursements, I made an estimation. I did not make the same explanation with respect to 1935. It is a different set up. In other words, the withdrawals here would be out of these receipts from various other sources. No detailed reports of receipts and disbursements were sent to the stockholders of Consolidated Mines of California while I was there. I have an item of receipts of the 1935 year of \$10,797.72.

6,777 shares of Monolith preferred stock and 4,768 shares of Monolith common were received under the Tyler agreement in 1934, and cash or securities other than the Monolith which [168] were converted into cash amounting to \$10,595, or a total consideration received of \$63,147.

With respect to 1935—Monolith Portland and Midwest Company stock, 28,881 shares, Monolith Portland Cement Company common, 407 shares; Monolith Portland Cement Company preferred, 1627 shares. Cash received from sundry investors, \$10,790.72. And then giving the values that I have extended for these stocks, the Midwest was \$41,877.45, and the Monolith common was \$1,017.50, and the Monolith Portland Cement preferred was \$10,574.50.

And, adding those three together with the sundry or the cash received from sundry sources, makes a grand total of \$64,260.17, and this consideration, of course, was received from the sales of Mr. Tyler's personally owned stock and had nothing to do with the original partnership agreement for '34.

(Testimony of Louis R. Jacobson.)

(After considerable discussion by the court which is omitted.)

By the Court: Gentlemen, we have all sorts of ways of raising legal questions before the case is concluded. I just want to make it clear in the jury's mind—I haven't said anything to them because I have been busy with other things; however, I do hear what is going on. I can sit back and do other work and listen too. I have surprised lawyers sometimes with it. But I want to make clear this proposition that the Government may go in certain respects to the determinations of the Corporation Commissioner as to the nature of the enterprise. After all, the blue sky law says—it doesn't guarantee anything—it says it isn't a fraudulent [169] scheme. It doesn't endorse it. In fact, they print at the top, "This is not an endorsement of the stock" in red so people can read it. The Government can go behind that because the mere obtaining of a permit doesn't mean anything. They can use it to show it was a cloak for fraud, but where the permit authorizes the giving of stock in consideration for something, the Government cannot go behind and say that is too much money. It is a matter of law which I will give you later, the amount of stock Mr. Tyler was given by the corporation. There is no restriction as to who he could sell it to. He may have violated the federal law by selling in interstate commerce, but the Government can't inquire why he sold it, how much he sold it for, and what

(Testimony of Louis R. Jacobson.)

he did with the money. He might have been shooting craps for all we know. The Corporation Commissioner decided he could do that. If it was a fraud on the stockholders to take that much money for the exchange, the Government has to show that representations were made that he wasn't getting anything for it. There is no charge made here that Tyler in any way represented or agreed that he would turn over these claims which he got for nothing . . . If you use the mails, it doesn't have to go from one state to another; using the mails, you see, using the mail whether it is interstate or not. You can be guilty of violating the law if you send it through the mail, even though you send it into the state . . . I don't think it says interstate commerce; it just says using the mail for the sale. I think [170] the indictment, or rather the three counts are drawn on subdivision 5 . . . It says, "Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—"

"(1) To make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such security through the use or medium of any prospectus or otherwise; or

"(2) To carry or cause to be carried through the mails or in interstate commerce—" "or". That means either way. That means you can't transport it. You can't send it through express companies.

(Testimony of Louis R. Jacobson.)

“By any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.”

Then follows the registration clause.

Mr. Montgomery: Then it gives the exemptions. You didn't read that portion.

The Court: Well, we will read the rest of it later on. [171]

LOUIS R. JACOBSON

further testified as follows:

Direct Examination (Cont'd.)

As to what accounts in the black book reflect expenditures on behalf of the McKisson Mine, the account of Edna F. Shaw in the early days of 1934, and there were expenditures out of the W. J. Shaw account and the W. J. Shaw & Company account. To what extent in those latter accounts, I don't know, and the Tyler account as well. I did discuss that when stock was received in the office, this Monolith or Midwest, that it was sold to brokers and the proceeds deposited, but I don't say that all the stock was sold to brokers. Some was sold in some other way. The brokers I have mentioned are Pledger & Company and Fastnow. Proceeds received from these brokers and other sources, after disposition of the stocks, were deposited, practically in all instances in the Frank S. Tyler account. The practice was to deposit them all in the Frank S.

(Testimony of Louis R. Jacobson.)

Tyler account. From the time I came until the company left to go to Santa Monica I was in the offices in the Banks-Huntley Building the greatest part of the time. I saw Alexander and Tyler and Wohlberg in the offices, and other persons that we might call salesmen. I saw Mr. Shaw confer with Mr. Alexander in the offices. That was infrequently. Alexander was on the road the greatest part of the time. When Mr. Alexander would return from a road trip, he would have conversations with Mr. Shaw. That was true of Mr. Wohlberg [172] and Mr. Tyler. A group of three rooms was the suite there in the Banks-Huntley Building. The front room was the entrance and the room to the left was Mr. Shaw's room, and the room to the right is the room which Mr. Tyler had our desks in. Mr. Morgan would take any desk that was available to him, either in the outer office, the center office, or in the office to the right. During the interval, if I were in those offices in the Banks-Huntley Building, I saw those individuals, Mr. Alexander, Mr. Wohlberg, I think a Mr. Nockels, go into Mr. Shaw's office, individually. That occurred more than once. When they were there and Shaw was in the office, I would say they would confer if they had any business to transact. When matters of policy were finally determined in respect to the sales activities of the partnership agreement those discussions would be had between W. J. Shaw and Frank S. Tyler. With respect to the sale of Consolidated Mines of Cali-

(Testimony of Louis R. Jacobson.)

fornia stock, they would have conferences between Tyler and Morgan and the salesmen. They would discuss matters quite generally as between Morgan, for instance, and Tyler would also discuss matters with him. There was never any one particular person. They discussed the matters with Mr. Shaw. When Alexander and Tyler were on the road and stock was sent in by them, if it came in the mail the stenographer, Miss Shroatman, or whoever was in the office, would hand it over to Mr. Tyler or me. I don't believe any of it was handed over to Mr. Shaw. Mrs. Shaw [173] never paid much attention to that. On one or two occasions Mr. Wikoff personally brought in some stuff. As they required funds, they would be sent over to the brokers. Those accounts at Pledger and Fastnow were carried in the name of Frank S. Tyler, Florence Stroatan and myself. At times I had some discussion with Mr. Shaw before I took stock over for liquidation to the brokers. In my capacity as accountant and bookkeeper and in keeping from day to day the records, and particularly the black book, I did not make any hard-and-fast distinction between the Frank S. Tyler and the W. J. Shaw account.

Some of the stockholders of the Consolidated Mines visited the offices from time to time. In several instances I recollect that they talked to Mr. Shaw, but very few, indeed, though, who did discuss matters with him.



(Testimony of Louis R. Jacobson.)

I am referring now to the journal of the Consolidated Mines, under the heading of February, 1936, Account No. 1, \$355,000, and the statement is "Mines Property," or "Mine Property." It is not an account number. That is just a check number. It is "Mine Property, \$355,000." That entry is all of the properties. That would include the Grand Prize and those other Porteous properties. It is an estimate of the value. I had discussed it with Mr. Shaw before that entry was made, in conjunction with Mr. Tyler, Mr. Morgan, Reed Sampson and Sam Chaney. There is an entry in the same book showing something about the cost of the mill. On page 1 of [174] the journal, under date of February 1936, I find there \$6500, described Mill and equipment. The other day I was testifying about an item of \$22,000 which represented the unpaid purchase price of mining property. That included 14,000 on the Porteus properties and 8,000 on the McKisson.

I did not make any profit and loss statements for the Tyler partnership at any time prior to January, 1936. I make a profit and loss statement for the Consolidated Mines of California, only as of December 31, 1936, in connection with income tax returns.

Mr. Tyler requested the information as to the progress of the mine; Mr. Shaw also, from time to time, asked me how the mine, as far as the record shows, just what the results were. Mr. Morgan as

(Testimony of Louis R. Jacobson.)

well was very much interested in knowing how things were going along at the property. Mr. Shaw was not a stockholder in the Consolidated Mines of California and Mr. Morgan was not a stockholder in the Consolidated Mines of California.

I don't recollect what the status of the bank accounts was after October or November of 1936. I prepared or assisted in preparing W. J. Shaw's income tax reports for 1934 and 1935, and 1936. When I was making up the income tax return for the year 1934 for Mr. Shaw—and if I made one for Mr. Tyler—I did not take into consideration any formal agreement which had been explained to me by Mr. Shaw or Mr. Tyler as between those two gentlemen. For 1935 that agreement was [175] taken into consideration. My recollection is that Frank S. Tyler signed it. I have no recollection as to W. J. Shaw signing it. That document was kept in the vault. The last time I saw it was some time in the latter part of '35 or the early part of '36. I don't remember if I made use of it in 1936 as a factor in determining the income that belonged to Mr. Shaw and what belonged to Mr. Tyler.

(Examining document.) No share of the partnership, the Tyler partnership agreement, or rather no share of the proceeds from the partnership agreement, is shown on W. J. Shaw's return for the year 1934. That return was notarized before me.

(Testimony of Louis R. Jacobson.)

(Examining document.) That is a direct copy of the agreement. That was signed by Mr. Tyler alone. My recollection serves me very clearly on that.

(The document referred to was received in evidence and marked "GOVERNMENT'S EXHIBIT No. 74.")

It was put into the vault. Others had access to the safe as well as myself. I had made use of it in connection with making income tax returns for the two gentlemen whose names are mentioned in there.

Mr. Norcop: "Monday, July 1, 1935.

"For and in consideration of the assistance rendered to me by W. J. Shaw in the formation of that certain mining partnership entered into between myself and sundry other individuals under date of February 6, 1934, and for certain [176] cash advances made to me and for other considerations received, I hereby assign to W. J. Shaw, an eighty per cent (80%) interest in any and all net income to be realized from the consideration received by me out of said partnership agreement, and from the net proceeds that may be realized from the sale of the capital stock I am to receive as my forty per cent (40%) interest in the corporation formed, namely, the Consolidated Mines of California, when such stock shall have been issued to me

(Testimony of Louis R. Jacobson.)

as and when authorized by the Corporation Department of California.

“It is understood that under the above mentioned partnership agreement I have incurred certain expenditures in the development of the mine properties, the amount now being in excess of \$35,000.00; and that I have still to expend additional sums before I shall have fulfilled my part of the agreement; all of which is in accordance with said partnership agreement. The amount to be expended is, at the present time, underminable, and will be based on the Engineer’s reports etc. The net profits are, therefore, to be arrived at only after all the terms of the partnership agreement have been fully performed.

“It is understood that the stock of the Consolidated Mines of California, to be issued to me, is to stand on the books of that Company, in my name, but I will, on demand, authorize the transfer of said stock to W. J. Shaw or his nominees.” [177]

(Testimony of Louis R. Jacobson.)

The record should show that while the document isn't signed, this being a carbon copy, it is understood and stipulated the only signature was Frank S. Tyler.

(By the Witness)

I made out the income tax return for W. J. Shaw for the year 1935. I presume this is a correct copy. It is a photostatic copy thereof. In making up this income tax return, I made use of the last Exhibit No. 74, the assignment of 80 per cent by Tyler to Shaw, dated July 1, 1935. As to whether there is any income reflected there as coming from the Tyler partnership agreement—there is none. There is income reflected as coming from the Consolidated Mines of California. (There was offered in evidence Exhibit 37, being the income tax return for W. J. Shaw for 1935.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 37.")

(Testimony of Louis R. Jacobson.)

## GOVERNMENT EXHIBIT NO. 37

"INDIVIDUAL INCOME TAX RETURN

\* \* \* \* \*  
For Calendar Year 1935  
\* \* \* \* \*\* \* \* \* \*  
W. J. SHAW  
634 South Spring Street  
Los Angeles, Los Angeles, California  
\* \* \* \* \*

## Item

8. Capital Gain (or Loss). (From Schedule C) \$65,067.25—16,200.00	52,867.25
* * * * *	* * * * *
10. Dividend on stock of (a) Domestic Corporations sub- ject to taxation under Title I of 1934 Act.....	340.25
* * * * *	* * * * *
12. Total Income in Items 1 to 11.....	53,207.50
13. Interest Paid (Explain in Schedule F).....	646.82
14. Taxes Paid (Explain in Schedule F).....	602.78
15. Losses by fire, storm, etc..... (Explain in Table at foot of page 2)	3,000.00
* * * * *	* * * * *
18. Other Deductions authorized by law (Including stock determined to be worthless during taxable year).....	25,978.95
19. Total Deductions in Items 13 to 18.....	30,228.55
20. Net Income (Item 12 minus Item 19).....	22,978.95''
* * * * *	* * * * *

(Testimony of Louis R. Jacobson.)

(An exhibit attached to this Income Tax Return reads in words and figures as follows):

“TO BE ATTACHED TO INCOME TAX RETURN FOR  
CALENDAR YEAR Jan. 1, 1935 to January 1, 1936 for  
W. J. SHAW.

Consideration Received from sale of 44,930 shares of Consolidated Mine Co. stock		
28,881 Shrs. Monolith Portland Midwest Co. Prfd at \$1.45		\$41,877.45
1,627 Shrs. Monolith Portland Cement Co. Prfd at 6.50		10,575.50
407 Shrs. Monolith Portland Cement Co. Common at 3.00		1,221.00
Cash and/or Cash Realization from Sundry securities.....		10,189.00
		<hr/>
		\$63,862.95
Sundry Profits from Securities		
1122 Shrs. Monolith Portland Midwest Co. stock Purchased		
Selling Price .....	\$1,626.90	
Cost .....	1,422.60	\$204.30
	<hr/>	
Sundry Profits on Sales.....		1,000.00
		<hr/>
		\$65,067.25
Cash realized from sale of part interest in mining partnership .....		4,000.00
		<hr/>
Less: Commissions and share of profits paid to others.....		16,200.00
		<hr/>
Net Capital Gain.....		<u>\$52,867.25</u> ”

(Witness Reading)

“Consideration received from sale of 44,930 shares of Consolidated Mines Company stock:

“28,881 shares Monolith Portland Midwest Company preferred, \$1.45, \$41,877.45.

“1,627 shares Monolith Portland Cement Company preferred, \$6.50, \$10,575.50.

(Testimony of Louis R. Jacobson.)

“407 Shares Monolith Portland Cement Company common, \$3.00, \$1,221.”

Q. And the next item? [178]

A. “Cash and/or cash realization from sundry securities, \$10,189.

“Total, \$63,862.95.”

The item, second from the last, has no connection with the Tyler partnership or the Consolidated Mines.

I cannot tell from examining this income tax return for 1936 for Mr. Shaw whether there is any income there the source of which is the Tyler partnership agreement. I cannot tell from examining this return alone whether or not there is any income reflected there for Mr. Shaw from the Consolidated Mines of California. I would have to have my working papers to determine that. I can only go by my recollection in respect to the preparation of this return. I have a recollection as to some notation I see on the income tax return that will assist me in answering your question. For the year 1934, Frank S. Tyler, in reporting on his income tax return, did not include any part of the proceeds received from the sale of the securities and other matters which he derived from the partnership agreement.

I took the position that until he will have fulfilled all the terms of that partnership agreement, and until the corporation was ready to take over the assets and assume whatever liabilities there were of



(Testimony of Louis R. Jacobson.)

the corporation, that he was not in a position to determine whether or not he had any profits.

That continued during 1935 because he continued in [179] this partnership arrangement with his individual partners.

In the preparation of the return of 1936 there was a small slop-over, I will say, from '34 on some of the money or securities that he had received, or profits he made on the deal. I can't say how much was derived by him on that partnership agreement, but it was very small indeed. It ran only a few thousand dollars.

That is the reason I made notations in here, in this income tax for the period 1934 to 1936, to take over part of that profit. That is about the time I set up the records, about as of October 1, 1934. That is W. J. Shaw & Company. I included whatever profits there were in that deal to Frank S. Tyler and then deducted from that return the amount of 20 percent, or whatever it was. My statement is that in this return is reflected 80 percent of Mr. Tyler's income under the Tyler partnership agreement in 1934, that is, 80 percent of his 40 percent. (Examining document) In 1934 Frank S. Tyler shows receipts of \$47,000; \$47,059.69, to be correct. The income tax return I have prepared for Mr. Tyler for 1935 reflects income for that amount of \$8,000. There was no connection between this figure of \$16,000 and the income tax return. During

(Testimony of Louis R. Jacobson.)

the year 1935, at the end of the calendar year, we were taking into account in making up both Mr. Tyler's return and Mr. Shaw's return this Exhibit No. 74, the assignment, 80 percent from Tyler to Shaw, and in which we approximated the \$8,000 as shown [180] on Tyler's return. The approximate amount of the profits of that. You made a statement a moment ago, that no return was filed for Frank S. Tyler for '34. I believe a return was filed for Frank S. Tyler and associates. (Examining document) It shows no income in line with my explanation which I made a little while ago. I took care of it in '36. A little hang-over, if there was any then.

(The document, income tax for 1934 of Frank S. Tyler and Associates, referred to was received in evidence and marked "Government's Exhibit No. 51.")

(Mr. Tyler's Income Tax for '35 offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 40.")

(Testimony of Louis R. Jacobson.)

GOVERNMENT EXHIBIT NO. 40

“INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1935

FRANK S. TYLER

848 - 19th Street

Santa Monica, Los Angeles, California

INCOME

Item	
1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer) share of Profits from Sale of Stock.....	8,000.00
from W. J. Shaw—634 South Spring Street, Los Angeles.	
12. Total Income in Items 1 to 11.....	8,000.00

DEDUCTIONS

20. Net Income (Item 12 minus Item 19).....	8,000.00”
---	-----------

Mr. Tyler’s income return here for ’36 does not necessarily show income from the Tyler agreement; it shows income from the Consolidated Mines or in accordance with that memorandum agreement which Mr. Tyler signed there giving his 20 percent interest.

(The document referred to was received in evidence and marked Government’s Exhibit No. 41.’’)

(Testimony of Louis R. Jacobson.)

## GOVERNMENT EXHIBIT NO. 41

"INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1936

FRANK S. TYLER

848 - 19th Street

Santa Monica, Los Angeles, California

## INCOME

Item

1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer) W. J. Shaw, 634 South Spring Street, Los Angeles .....	8,735.60
12. Total income in Items 1 to 11.....	8,735.60

## DEDUCTIONS

20. Net Income (Item 12 minus Item 19).....	8,735.60''
---	------------

(Mr. Shaw's Income tax return for 1936 offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 38.")

(Testimony of Louis R. Jacobson.)

GOVERNMENT EXHIBIT NO. 38

“INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1936

W. J. SHAW

634 South Spring Street  
Los Angeles, Los Angeles, California

INCOME

Item		
1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer) Monolith Stockholders Committee.....	31,000.00	
634 South Spring Street, Los Angeles		
10. Capital Gain (or Loss). (From Schedule C) (If Capital Loss, this amount may not exceed \$2,000.00). .....	69,742.05	
11. Other Income. (State nature). (Use separate schedule, if necessary). Sundry .....	100.00	
12. Total Income in Items 1 to 11.....		100,842.05

DEDUCTIONS

13. Interest Paid (Explain in Schedule F) On Mortgage, Deeds of Trust.....	1,447.01
14. Taxes Paid (Explain in Schedule F) On Real Estate (City and County Taxes)...	1,881.60

(Testimony of Louis R. Jacobson.)

## Item

18. Other Deductions Authorized by Law. (Including Stock determined to be worth- less during Taxable Year).....	60,451.75	
(Explain in Schedule F.)		
19. Total Deductions in Items 13 to 18.....		63,780.36
20. Net Income (Item 12 minus Item 19).....		37,061.69
* * * * *		* * *

(An exhibit attached to this Income Tax Return reads  
in words and figures as follows):

“W. J. SHAW

INCOME TAX FOR YEAR ENDING DECEMBER 31, 1936

## Other Deductions—Line 18

Losses from Sundry Ventures entered into  
for profit

Gould-Peterson Mine Venture.....	\$ 716.82	
Oil Venture .....	890.00	
Single Tax Committee.....	430.26	\$2,037.08

## Sundry Expenses

General Office Expenses.....	2,959.77	
Telephone .....	84.24	
Legal Expenses .....	1,000.00	
Revenue (U. S.) Stamps paid to be applied to Consolidated Mines stock certificates Income from sale therefrom reported under 'Capital Gain'—Line 10.....	2,400.00	
Traveling Expenses .....	173.38	6,617.39

To amount paid to W. J. Morgan for

services rendered to W. J. Shaw.....		6,000.00
--------------------------------------	--	----------

14,654.47

(Testimony of Louis R. Jacobson.)

To amount paid to Frank S. Tyler as share of profit on sale of Consolidated Mine stock. Total consideration received therefrom—\$43,678.05; Frank S. Tyler receiving 20% thereof in accordance with agreement .....	8,735.60
	<hr/>
	23,390.07
Division of Community Property Income	
50% to Edna F. Shaw, my wife, who has filed separate Income Tax Return.....	37,061.68
	<hr/>
	<u>\$60,451.75</u>

(Mr. Shaw's Income Tax return for '34 offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 36") [181]

Nothing is reflected on Mr. Shaw's income tax return for 1934 showing income from the Tyler agreement. It is marked 36 in evidence. As to Exhibit No. 34, for identification, 1937 income tax returns, by W. J. Shaw and Edna S. Shaw jointly—I don't think I prepared that.

(The document referred to was received in evidence and marked "Government's Exhibit No. 39.")

I prepared this Exhibit No. 34 for Edna S. Shaw in 1935. It has a relation to Mr. Shaw's income tax return for the same year, to pick up her community income.

(Testimony of Louis R. Jacobson.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 34.")

### GOVERNMENT EXHIBIT NO. 34

#### "INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1935

EDNA F. SHAW

1417 San Remo Drive

Pacific Palisades, Los Angeles, California

11.	Other Income (State nature) (Use separate schedule, if necessary)	
	Community Income .....	22,978.95
12.	Total Income in Items 1 to 11.....	22,978.95
20.	Net Income (Item 12 minus Item 19).....	22,978.95''

As to the one Exhibit 33 for the year 1934—that return of Mrs. Shaw's has a relation to Mr. Shaw's income for that year, taking up the community income.

(The document referred to was received in evidence and marked "Government's Exhibit No. 33.")

As to Exhibit 35 for Mrs. Shaw for the year 1936—the same applies.

(The document referred to was received in evidence and marked "Government's Exhibit No. 35.")



(Testimony of Louis R. Jacobson.)

GOVERNMENT EXHIBIT NO. 35

“INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1936

EDNA F. SHAW

1417 San Remo Drive

Pacific Palisades, Los Angeles, California.

Item

1. Salaries, Wages, Commissions, Fees, etc. (state name and address of employer) Share of Community Income. See Return of my husband, W. J. Shaw, 634 South Spring St., Los Angeles.....	37,061.68
12. Total Income in Items 1 to 11.....	37,061.68
20. Net Income (Item 12 minus Item 19).....	37,061.68”

As to the income tax returns of W. J. Shaw and Company for the years respectively 1935, 1936, and 1937—I prepared the returns for '35 and '36. May I now go back to the W. J. Shaw income tax for '37 and see if I have my affidavit on it; no, I did not prepare it. For the year 1935 W. J. Shaw and Company, I do not find any matters reflected in [182] that income tax report which bear on the transactions here that we have been discussing of Mr. Tyler and Mr. Shaw. As to '35—according to my notation there has been no income reported there, as I state thereon, the corporation had no earnings during 1935. W. J. Shaw and Company, to my knowledge, was a corporation at that time.

(Testimony of Louis R. Jacobson.)

As to the '36 return for that corporation—the same would apply. There is nothing there that has any connection with the enterprise that we have been discussing, that is, Tyler partnership nor Consolidated Mines. With reference to W. J. Shaw and Company for 1937, it shows no income. Of five income tax returns of the Consolidated Mines of California, a corporation, the first one for the year 1935 shows no income. And the reason for that was the corporation was incorporated as a skeleton corporation but hadn't actually entered into business. I prepared this return for 1935. It was not prepared from the books and accounts of the corporation. That was prepared from the black book. There was a minute return of about \$941 as shown thereon that had been deposited in the account of Frank S. Tyler, and I took the position that it was the property of the Consolidated Mines and was subsequently transferred to the books of the Consolidated Mines by charging Tyler for that amount. I prepared the income tax return for the year 1936 for the Consolidated Mines of California. It shows gross receipts of \$12,891.87. And the loss for the year of \$5,748.68. I prepared income [183] tax return of the Consolidated Mines of California for the year 1937. The gross income that shows for the Consolidated Mines of California for the year 1937 is \$15,237.96. The net loss of \$1,972.26. I did not prepare income tax return filed for the Consolidated

(Testimony of Louis R. Jacobson.)

Mines of California for the year 1938. (Stipulated to)

(The documents referred to, income tax returns of Consolidated Mines of California, were received in evidence and marked "Government's Exhibit No. 46," "Government's Exhibit 47," "Government's Exhibit 48," "Government's Exhibit No. 49," "Government's Exhibit No. 50," respectively.)

(Income tax return for W. J. Shaw & Company for the year 1938, which shows no income.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 45.")

(The documents referred to, Income Tax returns of W. J. Shaw and Company 1935, 1936 and 1937, were received in evidence and marked "Government's Exhibit No. 42," "Government's Exhibit No. 43," and "Government's Exhibit No. 44," respectively.)

(All subject to reservations.)

In the income tax returns for the years 1935, '36, and insofar as I made them for the year 1937 for Mr. Shaw, I did not mark it as income for him, all of the income from the Tyler partnership agreement and thereafter deduct 20 percent as going to Mr. Tyler. Not the Tyler partnership agreement, but the proceeds from the sale of Tyler's stock. I construed that as being income to himself, less the

(Testimony of Louis R. Jacobson.)

amount that [184] was due Tyler on the partnership agreement. I first put down the income tax returns for the years '35 and '36, all of this income, and then cut back or deducted from that 20 percent as going from him over to Tyler. I didn't prepare the '37 return, personal return, for '37.

During the time I was making up those two gentlemen's income tax returns I operated under Exhibit 74. Most of Mr. Shaw's income for the years 1935, '36 and '37 did not come from the source of this document 74, which is based on the Tyler partnership agreement. There was income on the settlement of the Monolith suit; there was receipts—I wouldn't call it income because there is a question there—receipts from the Mountain King Mine. A considerable sum was taken in on those two projects. Mr. Shaw first had an income from the Mountain King Mine in 1936. Partially in '35 and the greatest part in '36. I wouldn't want to call that income. I will say receipts. These income tax returns show, so far as I made them up, the correct income as I had it given to me. And during all that period until August of 1937 I was handling Mr. Shaw's accounting on his returns and keeping records for him. One of the primary reasons for the so-called black book was that I would have accurate records for that purpose. I did not, at any time, prepare a financial statement of the condition of the Consolidated Mines of California to be sent

(Testimony of Louis R. Jacobson.)

to the stockholders of that corporation. In composing those circular letters, that [185] were sent to the Consolidated Mines stockholders, I would say that Mr. Shaw would collaborate with Mr. Morgan and Frank S. Tyler, and as I recall Charley Wohlberg was in on a few of them. There was discussion generally in respect to some of those letters. As to Exhibit 5, I find on the postmark of the envelope the date of July 7th. That was after my time there, or I was not interested.

As to this two page letter on the Consolidated Mines of California stationery, July 12, 1935, which is a processed letter and has initials down in the lower left-hand corner on the second page of "FLW:S."—I do not have any recollection of who composed or all that collaborated in composing that letter. That letter pertained to the sale of Tyler's stock, if I am not mistaken, and also the mention was in that letter, if I recollect, George Hatfield's name was taken exception to by George Hatfield. I know Hatfield wrote a letter or called up Jack Shaw or someone in the office and told them he didn't like the use of his name in any business deal.

There is another letter. This is more of a general letter to the stockholders, and there might have been objection. The only objectionable point possibly in this whole letter would have been the mention of George Hatfield's name therein, but I have my doubts as to this being the letter which I am

(Testimony of Louis R. Jacobson.)

referring to. I note that the initials are apparently "FLW," or Wikoff, and it apparently was signed [186] by W. J. Morgan. I do not know about a letter dated September 1, 1937, which is Exhibit No. 16, with the initials "DD" in the lower left-hand corner. I have no recollection of this letter of June 12, 1935. I might have seen the letter, but the other letter just stands out in my mind as being the letter on which the discussion was on, but those are similar form letters that were sent out to the individual stockholders. I did not hear Mr. Shaw discuss with the stenographer or Mr. Tyler or Mr. Morgan or Mr. Wikoff or anyone else the composition or makeup of any of these circular letters before they were mailed. I would not say he did not. As to this letter of September 16, 1935—I notice it has no initials on it. I remember that there was a discussion in regard to this letter. I think Gilbert came down to Los Angeles at the time to discuss the progress of the property and I believe just about that time, too, the question arose as to whether the time was right for the construction of the mill. And I remember that a letter in this form was dictated—by whom, I can't say; it might have been Tyler; it might have been Shaw; it might have been Wikoff, either of the three or four gentlemen—but I recollect this letter. I saw it before it went out. There was not a duplicating machine in the office to prepare these processed letters. I do rec-

(Testimony of Louis R. Jacobson.)

ollect a Miss Campbell who carried on her business; it was to prepare such letters or process such letters. She had an independent business outside of our offices. [187]

As to most of those letters being processed to the extent of the date and the body and the signature, and then up at the top there is a place for the addressee that is typed in for each individual person to receive the letter. On several occasions that was done at the office at the Banks-Huntley Building. When there were a great number of such letters to be sent out, we would give her the numbers and addressers of the Monolith cards, that is, the members of the committee, and she would do all the work, take care of all the mailing. By that, I mean Miss Campbell, that is, if there were a great number. I don't recollect where her office was located. I think I engaged her on the first job, because we needed someone to do the work, and I asked my brother-in-law if he knew of any young lady that did that work, and he sent her over. I told her to take this copy and process the letters and take a list of the names that I gave her and mail them out. On occasions where possibly I might have done it, or Miss Stroatan or Tyler, whoever was in the office at the time, if a letter had to be taken care of, whoever, as I stated, was in the office, who had prepared the letter or had gotten all the cards out, would give it to the young lady to be processed.

(Testimony of Louis R. Jacobson.)

That was done in the regular course of the business. There was another girl, I recall. I believe there was someone else in the office before she was employed. I think a Miss Robinson—I don't recollect the name,—but there was someone else [188] there. After Miss Stroatan came, she stayed the same length of time I did. The other girl who preceded her was a Miss Robinson or Miss Davidson. I recall the occasion when a telephone call was put through from the offices there to Honolulu to a Mrs. Pew. Mr. Shaw conversed with her over the telephone. That was the latter part of '35. Thereafter a transaction was entered into by Mrs. Pew in which she acquired stock in the Consolidated Mines of California. The investment was 15,000 shares of Consolidated Mines for \$30,000. That was not entered in the Tyler account in the black book. The transaction of Miss Franklin, in which she acquired stock of Consolidated Mines, was not entered in the Tyler account in the black book. From Exhibits in front of me I cannot tell the record showing cash withdrawals from the Frank S. Tyler account for the years 1934, '35, '36, and '37, but only for '34 and '35. I do not find a withdrawal by Mrs. Edna S. Shaw in the year 1935. If any withdrawals were made by Edna S. Shaw out of the Tyler account, I would have ordinarily charged it against W. J. Shaw. I show withdrawals by C. S. Shockley in the year 1935. Shockley presumably got that money. He was not connected with the Consolidated Mines



(Testimony of Louis R. Jacobson.)

of California in any way nor with the Tyler partnership agreement. There was an item of loans paid withdrawn from the Tyler account in 1935. "Notes Paid." I have it recorded here, "\$4,986." And an item of interest paid in that year of \$140.82. In '34 [189] there was a withdrawal from that account in the name of the Monolith committee. This sheet of receipts and disbursements shows \$494.03; and for '35, \$3,830.30. Then there is a miscellaneous withdrawal for the year 1934 of \$110.22. That might be lumped together with another item which I don't recognize. Just a little dumping ground of items that I couldn't put to any particular account. The figures I have been giving from Exhibit 73 were made up from the Tyler black book.

#### Cross Examination

As to this letter of August 7, 1935, signed by W. J. Morgan to Mr. Cline—I recall seeing that letter before or a duplicate of it. There was discussion in the office with regard to the sending out of this particular letter. I believe that discussion was between Mr. Morgan and myself. My recollection is that there was some difference in opinion between Morgan and Mr. Shaw as to some of the wording in this letter, and I know there was quite an argument over it, and there was a slight change made in it. I do recollect that there was a discussion, particularly with reference to this letter so far as the

(Testimony of Louis R. Jacobson.)

last paragraph is concerned, with respect to the financing of the property. That reads "The financing of the mill has been placed in the hands of Mr. Frank S. Tyler who, as secretary-treasurer of the company, is acting as an individual in the financing"—and, as I say, I don't know whether—Morgan is the one that discussed the matter with [190] me, and I know they had quite a row previously at the time he came out of Shaw's office, and I think it was Morgan that stated that the word "financing" shouldn't be included in that letter, that it was not proper because Tyler was not financing the property. My recollection is that the letter was stopped. I don't know how many were mailed. I recall in the Tyler partnership agreement there was a provision for a mill within 90 days. The time became extended beyond the 90 days before doing the work on the mill, on the advice of the engineers. I think it was Reed Sampson. The advice was that they should go ahead and do considerably more development work to determine definitely as to the type of mill and location of the mill. Now, the question of the type of mill is vague, but I do remember that the main discussion was with reference to the location of the mill. There were not any moneys expended on the properties that are not reflected in the Tyler account, that I have any memorandum available here at the present time, but there were certain moneys expended by Mrs. Edna Shaw or moneys that she had advanced to the properties, and

(Testimony of Louis R. Jacobson.)

I think the money was sent up to the bank, the Bank of America, at Jackson, and that was the early part of '34. Those moneys were for carrying on the operation of the mine, the first few months of its operation. As to the \$7,000—before I could definitely state that \$7,000 has not been spread on the books, I would have to examine that memorandum and check it back [191] with the records to determine as to whether or not that \$7,000 has been shown on the books here. My recollection is, and from the memorandum I have seen notation thereon, that that money had not been taken out of the books of account. I have seen it in their files. There is a memorandum, I think, in the file of Mr. Hughes there that shows about \$7,000. I haven't got the exact figures in my mind and, as I said, I would have to check back with the records. As to the \$7,000—the memorandum shows what it was used for. I think it was used in the operation of the mine. Part of it went to the payment on the property, one item of a thousand dollars recorded therein that went to Guy Graves for legal expenses, and other odds and ends that went to the account for the benefit of the mine. As to whether that \$7,000 was used to keep the McKisson option in effect—that is what the detail of that memorandum indicates, that payment had been made for the benefit to keep the property alive, the option alive, and that there was a notation on that particular memorandum stating that none of those amounts had been recorded on the

(Testimony of Louis R. Jacobson.)

books of the company or in Tyler's account, and, as I stated a moment ago, to definitely determine as to whether or not they had been recorded either on Tyler's account or on the books of the Consolidated Mines, because expenditures were made on about the latter part of '35 and the early part of '36, I would have to check back with the general ledger and journal to determine definitely whether those [192] items had or had not been spread on the books of the company. They wouldn't be on the black book as far as Tyler's accounts were concerned, because they were paid out of W. J. Shaw's personal account. W. J. Shaw's personal account was in the black book. But you mentioned the Tyler account, W. J. Shaw, W. J. Shaw and Company, and the Tyler account, as well as the W. J. Shaw were in the black book. I am unable to say whether that \$7,000 item is reflected in the books.

As to a \$53,000 item that was in a letter form that was in the Corporation Commissioner's file at the time of granting the third permit—that is the amount that is about correct. As I recollect, the Corporation Commissioner was then making an investigation of the Consolidated Mines prior to the issuance of the third permit and they requested that I prepare a statement showing the amount that had been advanced or expended for and on account of the mine by Frank S. Tyler and before they took it with them they requested that I initial or sign that statement. That showed in the books of account that existed at that time. Summarizing the various

(Testimony of Louis R. Jacobson.)

records that were available at that time, I prepared that statement for him, indicating that amount of expenditure. In the records that we have here, we would have to add them all together and possibly add Mr. Shaw's advances and possibly that \$7,000, that might all aggregate the \$53,000.

As to this certificate of Homer J. and Florence B. [193] Arnold, dated December 14, 1936, No. 732. Certificate No. 732 came from Consolidated stock of Frank S. Tyler from certificate No. 716. 716 for 4,000 shares to Frank S. Tyler was transferred from Frank S. Tyler from certificate No. 680 for 5,000 shares. That was dated February 15, 1936. Certificate No. 680 for 5,000 shares was issued to Frank S. Tyler and came from certificate 666, 5,000 shares that has been issued to J. R. McKiver. The certificate No. 666 is an original issue; that is as far back as we can go.

There is certificate No. 679 for 5,000 shares that was issued to Frank S. Tyler on February 15, 1936, and that came from certificate No. 665 for 5,000 shares, which is issued under date of February 15, 1936. There is a stock ledger. 10,000 shares of stock was issued to McKiver, February 15, 1936, under the third permit. I don't know why they gave him 10,000 shares. They had some understanding there, Tyler or Shaw, with Mr. McKiver. He was to receive 10,000 shares. The Woodruff certificate No. 741 is for 30 shares of stock issued to Regina Woodruff on May 13, 1937, and that was transferred from

(Testimony of Louis R. Jacobson.)

Frank S. Tyler certificate dated August 26, 1937, on certificate No. 716 originally for 4,000 shares. August 26, 1937—that was beyond my time.

Goodrich, 740, 18 shares, that is the same transaction. It goes back to certificate 716, and then back, and comes from the private stock. And Voget, 691. That goes back to the other McKiver certificate. And Voget's 696 is out of [194] 676 and 679 and goes back to 679, McKiver.

As to the list of stockholders under certificate No. 3 of the Corporation Commissioner, as to J. R. McKiver and L. D. Gilbert, 20,000—that is the Gilbert who was here testifying that was managing the mine for about three years. The stock books show 10,000 to Gilbert and 10,000 to McKiver.

The Court: I will read it:

“February 8, 1936

“Consideration received Monolith Portland Cement Company, preferred stock 6,755 shares, common stock 4,754 shares, cash \$11,399.

“The cost of development work and other expenditures in connection with the mine paid by Frank S. Tyler amounts to approximately \$53,000.”

(By the Witness.)

The above is a memorandum that I gave and in red pencil I have my name there. I gave that to the auditor of the Corporation Commissioner. And he made me initial it as to its correctness. I do not

(Testimony of Louis R. Jacobson.)

accept Mr. Hughes' findings that have been shown here, as my own.

As to how much was the expenditure that were made on the other claims, the Grand Prize and the Mineral Lode—I don't know. It wouldn't show in the various reports that have been made. If they done any assessment work or any work whatsoever on the claims other than that of the McKisson, I probably would just lump it in with the McKisson as one unit. I have [195] always taken those claims as a single unit. There was an investigation made by the Securities and Exchange Commission, with regard to this matter. There was a question raised at various times as to whether they were entitled to any information. Oscar Trippett took the position at various times in his conferences with Jack Shaw that they were not entitled to it. In making up my statement as to the 355 thousand odd dollars valuation of the mine; I took into account certain reports that were made by the Engineer. In the Corporation Commissioner's report attached to the application are mining engineers' reports that I have referred to. The date of the report is October 31, 1934, and it is the McKisson, Grand Prize, and Mineral Lode. It is the only report here that I can find, but my recollection is that I also used the report made by Reed Sampson of the Division of Mines. I don't have his reports. All these are marked in initials "S.E.C.," and are Chaney's. "S.E.C." doesn't mean

(Testimony of Louis R. Jacobson.)

Securities and Exchange Commission, but S. E. Chaney. I took Mr. Chaney's report, having known of him as being a reputable engineer, and also particularly Reed Sampson who I got to know quite well. I accepted their figures. (Examining document) (Reports of Chaney) I was interested only in that little summary down below there which, as I recollect, I used as a basis, without going into all the other reports, although I read them all. So far as getting my original item, I do not find my \$355,000 item there. I arrived at my [196] \$355,000 item by conferences with Chaney and Reed Sampson. We also had a discussion with Morgan as to what value to set up on the books. I know Tyler was in on the conversation too, and I know that I finally discussed the matter with Mr. Shaw as to whether that was a fair figure.

I took here under ore reserves the engineer Chaney's valuation of ore reserves of \$1,815,000. There were figures also here of ores blocked out, probable ore, and visible ore, and all that stuff that the engineers may use those terms for, and we came to a decision that a figure of \$350,000 or \$355,000 was a fair figure to set up in relation to the total value as placed by the engineers. Here it shows \$1,800,000. Of course, the cost of operation and everything else would have to go against it if you carried it on the operations. But \$350,000 on an estimated valuation of \$1,800,000 is about a sixth. I might say that here we attempted to be as con-



(Testimony of Louis R. Jacobson.)

servative as possible. You undoubtedly have seen lots of mine promotions where they issue a million dollars worth of stock and then set up on the books property valued at a million dollars. It was no par stock, and we could have set any value on it, and we felt that taking a valuation of \$350,000 was a fair valuation of that property. It was a guess, that is all it was. All gold mining is nothing but a guess. Mr. Morgan had access to the books and records. I don't think Mr. Morgan went out or used the telephone to solicit. If any certificate holders or [197] interested parties would want to know about the mine, I know Morgan had confidence in the property, and I believe he still has, and he will tell them that it was a good proposition. Mr. Morgan generally carried on his conversations in my office. I do not know of any arrangement between Shaw and Tyler as to the division of any profits in 1934. I do not know of any arrangement for a division of profits until this agreement or rather this memorandum of July 1, 1935.

When the stockholders came to the office they saw whoever was there, whether it was Tyler, Morgan or Shaw. Mr. Morgan was a member of the Tyler partnership agreement. I do not know how much he was signed up for from memory. I would have to refer to the list. I do not know where those are. The only time I had access to that—although they were in the safe, I believe they were in the safe—was when I compiled the records in October

(Testimony of Louis R. Jacobson.)

1934. I had to make use of them to determine the investments by each of the members. (Examining Corporation Commission File) Morgan would not be on that list because the certificates were immediately issued thereafter and his name does not appear here insofar as the stock ledger is concerned. All I know is that Morgan appeared on those lists. Any information, of course, which I can give now would be nothing but hearsay. When I came into the picture a good deal of the stock had been sold, disposed of, and all I had was just those blank—those partnership agreements with the appendages thereto indicating [198] the investments by these various members. The certificates that he was supposed to turn over stood in the name of Mrs. Morgan. I was informed that both the money consideration, if it was ever given to anyone, and the certificates were cancelled out. In other words, it never got into the hands of Tyler. He never got so far as to be a stockholder in the new company.

As to Mr. Shaw's personal income—he had other transactions where he bought and sold stock and made income. As to this Pew transaction—I did not speak of that having subsequently been reflected in Tyler's account as shown in the black book. I don't know. Moneys were transferred from W. J. Shaw to Tyler as he required money, but so far as that particular item in the full amount of \$30,000, I can't say that that was transferred in toto. Shaw was dealing in other matters with Mrs. Pew than

(Testimony of Louis R. Jacobson.)

this particular item of 15000 shares at \$2.00 a share, —\$30,000. In setting up the receipts of Frank S. Tyler—there were loans, money transferred, to Tyler from Shaw. I don't know—I can't say that they were—it might be construed as a loan, but then if Shaw required that money, if there was any excess money in Tyler's account, then he could draw on Tyler. Mr. Tyler was not in any way interfered with in drawing on his account that I know of. In the Tyler and the Shaw accounts, the funds were intermingled. Mr. Shaw could draw on Mr. Tyler's account, but Tyler could not draw on Mr. Shaw's account. [199] I didn't keep track of what belonged to Mr. Tyler in his account and what belonged to Shaw in his account. It would just be entered on Mr. Shaw's account as being a receipt on his records and disbursements on Tyler's records, more of the nature of transfer of funds from one to the other. There would be a credit and a debit from one to the other.

(Copy of List of names making up 90,000 shares offered.)

(The document referred to was received in evidence and marked "Government's Exhibit No. 75.")

(Testimony of Louis R. Jacobson.)

REGINA WOODRUFF

a witness for the Government, testified as follows:

Direct Examination

I have my stock certificate with me.

By Mr. Norcop:

Q. Now, this certificate which is photographed in the indictment, No. 741, for 30 shares is dated the 13th of May 1937, and did that come to you through the United States mails, Miss Woodruff?

A. It did.

Prior to receiving this I had had a transaction with the Consolidated Mines of California. I talked with someone who was there and said he was Mr. Shaw. That was by telephone. I called up the office and asked for Mr. Tyler. Most of the letters which I had received had been from Mr. Tyler, and I had called once or twice before and I asked for information and had talked with Mr. Tyler. I asked for Mr. Tyler and was told that he was no longer in the office, but that I might talk with Mr. Shaw, and that was the first time that I even knew that Mr. Shaw was connected with the thing at all. I hadn't had any information in regard to the Consolidated Mines for some time, and I wanted to know what was being done, and why, [200a] and just what progress was being made, and he assured me that everything was fine and that he was working without salary and he was hoping that the thing

(Testimony of Regina Woodruff.)

would be paying very, very soon because he wanted to be drawing a salary, and that he was quite sure that it would be paying us dividends and we would get our money back within a reasonable length of time; and he wanted me to convert my Midwestern stock into the Consolidated Mines, and he offered me—I had 30 shares of Midwestern, Monolith Midwestern,—and he offered me 60 shares for it. I think that is the substance of it.

I had a certificate for 30 shares of Monolith Midwestern stock, and Mr. Shaw's offer was to give me 60 shares of this Consolidated Mines for that. I sent it in and I received through the mails this certificate and I immediately called the office again and at that time I asked for Mr. Shaw and said that I had been told that I would receive 60 shares and had received only 30, and he said, "Well, that was a very serious mistake," and he would see that I got the other 30, which I did.

(Certificate offered)

(The document referred to was received in evidence and marked "Government's Exhibit No. 77.")

### Cross Examination

I am a school teacher. I got another 30. I would be very happy to show it to you. My certificate is for the Monolith Portland. I had both common and preferred Monolith stock. I had 15 shares of preferred and 15 shares of common, both of which I

(Testimony of Regina Woodruff.)

had bought through Mr. Shaw's office quite [201] a number of years ago, and that was converted over into this 123 shares. I don't know how much was for the common and how much for the other, because I got the one certificate and I don't know what the basis was there.

I reside in Los Angeles. [202]

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### MARSHALL HOLDEN

a witness for the Government testified as follows:

#### Direct Examination

I am in the trust department of the Security-First National Bank. The corporate trust section. I have been there since 1926. We have general supervision of the records of the Monolith Portland Cement Company. Our bank is transfer agent for the company. I have the records showing the stockholdings in the Monolith Portland Cement Company for Sylvia A. Morgan. She was a holder of both preferred and common stock. She held 1984 shares prior to May 17, 1932. Those shares were transferred on May 17, 1932, to William J. Morgan. They remained in his name until December 15, 1933, when they were transferred back to Mrs. Sylvia A. Morgan. They still remain in Mrs. Morgan's name. Those shares, since the 15th of December 1933, have at all times remained in the name of Mrs. Sylvia

(Testimony of Marshall Holden.)

A. Morgan. Mrs. Morgan was the record holder of 640 shares of preferred stock and on May 17, 1932, those were transferred to William J. Morgan and remained in his name until December 15, 1933, when they were again transferred to Mrs. Sylvia A. Morgan. They have since remained in her name. The records show no other ownership by William J. Morgan of preferred or common stock in the Monolith Portland Cement Company. (Photostatic copies offered).

(The documents referred to were received in evidence and marked "Government's Exhibit No. 78.")

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JAMES W. FROMM

a witness for the Government, testified as follows:

[203]

Direct Examination

I am with the California Bank here in Los Angeles at the Head office. I have a signature card in the name of Frank S. Tyler. The account was opened March 20, 1934, commercial account. I have an authorized signature signed Frank S. Tyler by W. J. Shaw, power of attorney, dated February 26, 1934. That is the principal signature on the name card. The original account in the name of Frank S. Tyler and the power of attorney account of Frank S. Tyler by W. J. Shaw. The next account I have in the commercial account in the name of Mrs.

(Testimony of Marshall Holden.)

Edna S. Shaw, which was opened April 25, 1934, and I have a power of attorney account of Edna S. Shaw by W. J. Shaw dated April 2, 1935. I have another power of attorney, Mrs. Edna S. Shaw by W. J. Shaw, which would indicate that the original power of attorney was cancelled on July 11, 1934, and the second power of attorney was cancelled October 18, 1939. Then I have a commercial account in the name of W. J. Shaw and Company which opened December 16, 1935. (Photostatic copies offered)

(The documents referred to were received in evidence and marked "Government's Exhibit No. 79.")

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#### FLORENCE STROATMAN BARDON

a witness for the Government, testified as follows:

##### Direct Examination

I sought employment at a set of offices in the Banks-Huntley Building some time in the year 1935. When I went [204] into the offices—I had been sent there by an employment agency and I had a card from them—I presented *to* to someone whom I believe to be Mr. Tyler. I gave my name as Florence Stroatman at that time. That was the business name that I always worked under. I had a talk with Mr. Shaw that day. When I first went there, it was—I think it was in January of 1935. I con-



(Testimony of Florence Stroatman Bardon.)  
versed with Mr. Shaw in the office which he used as his office in that suite. The conversation was just general as to my qualifications and experience. Later, I got a call to come down for employment, and I went back in April of 1935. When I first returned there to commence employment, I spoke with Mr. Shaw. I couldn't tell you now who greeted me at the door. I entered upon my duties. As to compensation nothing was said about who would give me my compensation. The compensation that was stipulated to was \$20 a week. My duties when I commenced to work there were general stenography. I answered the switchboard, I acted as receptionist, and performed all the duties of a general stenographic nature around the office. I was the only secretary in the offices there, full time. My employment continued until they moved their offices to Santa Monica in 1937. I was down in Santa Monica in the offices for some purpose for a very short time after the move. I saw occupying the offices during the time that I was at the Banks-Huntley Building, Mr. Shaw, Mr. Tyler, Mr. Morgan, Mr. Jacobson—numerous others that came and went. Three rooms were in [205] the suite. On entering the office people would enter into the reception room, and I was there. Later on Mr. Morgan had a desk in there just opposite mine. But that was after I had started working there. I took dictation in shorthand. I received dictation while I was employed there, from nearly everybody that

(Testimony of Florence Stroatman Bardon.)  
came in. Mr. Morgan and Mr. Jacobson, and I have written numerous personal letters for other people that came in, for Mr. Reed Sampson, Mr. Alexander, Mr. Chaney, and any number of others that came in. Letters were prepared to be sent out to holders of stock in the Consolidated Mines of California, and they were sent out thru the mails. There were letters typewritten and processed. We did not have equipment in the office there to do processing. We used to call a Miss Campbell to do some of it. I have called her, under Mr. Jacobson's direction, a number of times and had her send over for a letter, but just whether she was given a list on those occasions or whether I typed the envelopes and filled them in the office, I can't recall those incidents now. When I had the duty of sending out a large list of letters, I prepared the envelopes first, and I found that the simplest method from my own work. As to those names that I put on the envelopes, any that were sent to Consolidated, were taken from the list of the subscribers or owners of stock in the Consolidated Mines of California. We used individual stamps on those letters. When I was preparing a circular letter to send out to the [206] stockholders, I stamped them in addition to typing the envelopes. After I finished the job and had them ready for mailing, I proceeded to mail them. On some occasions I was assisted in the mailing process by some of the other folks in the office. They were Mr. Tyler, Mr. Jacobson, even Mr. Alexander

(Testimony of Florence Stroatman Bardon.)  
has helped me fold some of them and put them in envelopes. Mr. Morgan has helped me. (Examining a file, that contains a bundle of circular letters, in a file called "Circular Letters,") This looks like the one I used to keep, in a file cabinet, general file cabinet. (Examining documents) I have gone through the list of the form letters, or whatever this file is, and have segregated all the documents that I either know I didn't prepare or that I am doubtful about. These are all letters which I prepared, all right, but I can't remember each individual instance when I wrote them. I identify them by letter "S" on there and the signatures, the general set-up. I wasn't paying particular attention to the contents; when I saw that letter "S" down there as the stenographer's letter, I know I was the "S" in the office, so the "S" on them would be mine.

(The document referred to was received in evidence and marked "Government's Exhibit No. 80.")

(Examining document) As to this form letter dated July 1, 1937, addressed to Laura I. P. Franklin, P. O. Box 254, Victorville, California, and the original from which this [207] processing was done, the fact that my initial is on there would indicate that I had done it, I had written up the letter. I have finished reading it.

As to these three letters, all of them having that same date, but addressed to different persons and all

(Testimony of Florence Stroatman Bardon.)  
of them, having the initials "FST"—those initials would indicate Mr. Frank S. Tyler, and then the "s" would be mine.

The offices in the Banks-Huntley Building were closed up just about the end of June, and it is my understanding that they had engaged the offices in Santa Monica at least a few days prior to that time, but we did send out—Mr. Jacobson and I were still in the office downtown—and we did send out some letters to people and apprised them of the change of office address and this must have been the one; because the next to the last paragraph recites: "We have moved to our new location, Bay Cities Building, Santa Monica". And the stationery had already been printed with Bay Cities Building, Santa Monica, California, with the phone number. Mr. Jacobson and I were still downtown and we sent them out.

(The document referred to was marked "Government's Exhibit No. 81 for identification.")

(One to Miss Margaret Gaud) also

(The document referred to was marked "Government's Exhibit No. 82 for identification.")

(One to Mrs. Alberta E. Stearns)

(The document referred to was marked "Government's Exhibit No. 83 for identification.")

[208]

(Examining document) This letter dated March 8, 1937, on the stationery of W. J. Shaw & Company was written by me and it was signed by Mr.

(Testimony of Florence Stroatman Bardon.)

Shaw. I recognize his signature there. And my initial "s" down here. That is an original letter.

(The document referred to was received in evidence and marked "Government's Exhibit No. 84.")

(Three other Letters offered.)

(The documents referred to were received in evidence and marked "Government's Exhibit Nos. 81, 82, and 83," respectively.)

Mr. Norcop: On the letterhead of W. J. Shaw & Co. Investments. 634 South Spring Street, Los Angeles. Trinity 9606. Established 1914.

"March 8, 1937

"Mr. James Kruse

"1127 Laguna Street

"San Francisco, California.

"Dear Mr. Kruse:

"My reason for not answering your letter promptly is that I have been expecting to come to San Francisco every day for some time, and I thought it best to have a personal talk with you, to go over the matter, so that you might understand the whole situation.

"I will be in San Francisco very soon now and will give you a call upon my arrival.

"With kindest regards,

"Yours very truly,

(Signed)

"W. J. SHAW." [209]

(Testimony of Florence Stroatman Bardon.)

(By the Witness) That is Mr. Shaw's signature. There were not any stockholders' meetings of the Consolidated Mines of California while I was employed by the companies there. Not to my knowledge. In the course of my duties, I did from time to time place long distance telephone calls as secretary in the office for persons in the office. There were calls placed to the mine, or its location up in Calaveras County. To reach the mine I would call either Mokelumne Hill or Jackson. It must have been Mokelumne Hill. I recall placing telephone calls to Honolulu. I handled the placing of that call. I was calling Mrs. Pew in Honolulu. I don't really know who asked me to place it. However, Mr. Shaw did talk with her. As to whether subsequent to this telephone conversation, Mrs. Pew made an investment in the Consolidated Mines of California—I don't really know whether she did right after that phone call or not. She did at one time make an investment. I was not the bookkeeper.

As to Exhibit No. 59, which is a processed letter, of July 1, 1937, being addressed to John W. and John Wesley Cline, Route 1, Box 5, San Jose, California. This is the same letter that I saw a minute ago. The signature at the foot of the letter was one of the original signatures. It is Mr. Frank S. Tyler's signature. (Examining document) This letter of April 9, 1937, addressed to Mrs. C. E. Seeger is an original letter. This one is signed for Mr. Tyler

(Testimony of Florence Stroatnan Bardon.)

by me. Now, this may be a letter which I answered for him; [210] because I did that from time to time, if there was nothing except the sameness to report to people, or I happened to know what the correct answer would be to any situation they might have been inquiring about I would have answered it myself. I did that in the regular course of my employment. If they were around to sign them, they would sign them. That one addressed to William and Julia A. Schumacher, Eugene, Oregon—the same situation would hold with this letter—being a stockholder, they would have received one.

As to this July 1st letter that is filled in with the name of Mr. Augustus E. and Lillian B. Gardner, Forest Grove, Oregon, my comment would be the same about that as the last one I have just examined. This one that may be dated April 1, 1937, to Grace Hayes, Route 1, Box 270, Fresno, California. It is signed "Frank S. Tyler by S," my initial. That is my signature. I would say it was mailed by me, after it was prepared.

As to this one of the July 1st letters to Mrs. Mary M. D. Craig, R.F.D. No. 1, Riverdale, California—my answer be the same on that letter, as to the preparation and the mailing. (Examining letter.) This one March 30, 1937, addressed to Mr. Garfield Voget, Hubbard, Oregon, is an original letter. I signed it for Frank S. Tyler and I assume mailed it.

As to exhibit No. 54, which is a stock certificate No. 742 of the Consolidated Mines made out to the

(Testimony of Florence Stroatman Bardon.)  
names of J. C. [211] Goodrich and E. M. Goodrich, calling for 18 shares, and dated the 8th of June, 1937; the signature below that date is Frank S. Tyler; and the signature over to the right is Henry Wikoff—H. L. Wikoff it is signed. He was an officer of the company. Anything of value would be mailed registered mail so they would be too. I used to keep the pink cards we got back in a stack, but that stack was kept either in the file cabinet or in the safe.

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DOROTHY DRIVER,

a witness for the Government, testified as follows:

Direct Examination

About July 10th, 1937, I went to work for Mr. Shaw. I was employed in the Bay Cities Building about July 10th by the Jumbo Consolidated Mines and the Consolidated Mines of California, William J. Shaw & Company. Mr. Shaw employed me. I had a conversation leading up to the employment—the substance of which was that he asked for my qualifications. He was interested in whether or not I knew bookkeeping and simply stipulated that it would require the double entry system. And I stated that I had a knowledge of double entry system in bookkeeping. Mr. Jacobson was supervising the bookkeeping. Mr. Jacobson was not spending full time in the offices. I guess I made entries in the



(Testimony of Dorothy Driver.)

books of the Consolidated Mines of California after I was employed. My employment was of short duration. I was there five months. That would be to the latter part of November. I was succeeded by a so-called tax expert by [212] the name of Goeing. I was gone and he was going. I believe no stock was issued while I was employed. I probably made entries in the journal and the cash receipts record, the check record, and payroll record. (Examining entries.) This is back in '36. This is my writing on the check record, and I see my handwriting in the month of August of 1937. It should have commenced about along in there, I think. It continues on the next page for September and through September, and October, is mine. In the journal, again it is in August. Nothing in November. Cash received shows June 1937, and I had never heard of that. It shows my writing, but I had never heard of it, but it must have been receipts, nevertheless, in that month. That shows on one page. It is June, July and August. And turning over in the next page to September and October. And the last third of that page is in someone else's handwriting. (Examining ledger.) Under "Bank of America, August 1937," I show receipts and disbursements in August, September and October.

Compensation insurance deposit—August. There is one entry made by me.

Mill and equipment—September, one entry.

(Testimony of Dorothy Driver.)

Looking at the liabilities account. F. S. Tyler, two entries, August and September—there are more than two entries, but entries made in August and September—October also. George Porteous—one entry. You can see the bookkeeping wasn't heavy. Sales, gold shipments—three entries, [213] August, September and October. That is '37.

Compensation insurance—entries in August, September and October.

Engineering fees—October.

Freight and drayage—October.

Labor—August, September and October.

Miscellaneous—October.

Office expense—August, September and October.

Repairs—October.

Supplies—August and October.

Taxes—August, September and October.

Water—October.

That completes the book. Those entries were made by me in the regular course of my employment. I must have received instructions from Mr. Tyler or from Mr. Jacobson. I did not receive any instructions from Mr. Shaw pertaining to the bookkeeping.

As to a processed letter dated September 1, 1937, filled in with an addressee, the name being Mr. Patrick F. Murphy, 233 North Third Street, San Jose, California—as I recall, this was a letter that I typed from a letter written in longhand. For that

(Testimony of Dorothy Driver.)

reason, I put only my initials. If I had known the originator of the letter, I would have indicated his initials. I don't recall who prepared the longhand that I used. The signature on the letter is H. L. Wikoff. It is typed in, "Consolidated Mines of California, by H. L. [214] Wikoff, President." I don't remember who took care of the mailing of circular letters like this one of September 1, 1937. The original was typed by me, and then it was sent out to a multigraph concern there in Santa Monica. While I was the secretary, I recall but this one circular letter being sent out. The multigraphing of this was done by a man who has since died. They were addressed in the office. I did that. I prepared the envelopes together with the letters. I don't believe I mailed the mail. I think the post office was right across the street from our office, and Mr. Tyler would often take the mail out. I might have put a letter in the chute, in the building, now and then.

As to the September 1, 1937, letter—I remember one form letter that was prepared, and it had several boxes of the letters. My part in the preparation of those was simply the insertion of the name and the addressing of the envelope.

(Dodson Letter offered.)

(The document referred to was marked "Government's Exhibit No. 85 for identification.")

As to the source of the names I used on the envelopes when I was addressing them—I must have

(Testimony of Dorothy Driver.)

gotten them from the stock ledger. They were stamped. We all worked together putting the stamps on. I should say Mr. Tyler helped me. I think I saw Mr. Tyler carry one box across the street, to the post office. I don't know whether I watched the full procedure. [215]

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LAURA FRANKLIN,

a witness for the Government, testified as follows:

Direct Examination

In the spring of 1934, I was residing at Malibu La Costa, about 10 miles north of Santa Monica. I had my own home there. Early in that year, Mr. Shaw and Mr. Tyler called at my residence. It was about the end of June. There was present at my home besides myself and Mr. Shaw and Mr. Tyler, a friend of mine who was visiting there. Mrs. Remington of Boston. There was a conversation that took place between the four of us. I was preparing to move, to go away for the summer—I mean, not to move, but to go for the summer, and Mr. Shaw came to see if he could rent the house for Mr. Tyler. He said, “I am Mr. Shaw, who has—who agreed to buy your beach lots, and this is my friend who is a brother-in-law of my wife,” something to that effect, “and he would like—I would like to have him—he would like to have this house for a year, and we will pay you \$300 for the year's rent.”

(Testimony of Laura Franklin.)

As I had been trying very hard to rent that house for some time and wanted to go East, I decided to take their offer. I did take the offer. The rental was paid there. Mr. Shaw paid the rental. I returned about the first of October or thereabouts of the same year. I was then at Mr. Shaw's office in Los Angeles at 634 South Spring Street, and I saw Mr. Shaw there. I had a long conversation with him in his office, where he had his desk and his files. No one else [216] was present at the time. Mr. Jacobson came in once to get a paper that he wanted from Mr. Shaw.

During the summer, while I was away, I think that I wrote to Mr. Shaw to ask if Mr. Tyler would like to buy my property, the house and lot up on the hill. And he said that Mr. Tyler did not have any finances with which to buy. I asked him about this other deal that he had promised to carry on, and he said that his wife had decided that she would rather have mining stock than this property of which I had assigned to him, and for which he and his wife had signed.

And he said, "I think you have come at a very fortunate time. We are having a stock meeting here, a meeting of directors about this mine that I told you about." He advised me to go up and visit the mine up in the mountains when I first met him. And he said that he thought that if I would like to turn in my property on this mine that I would find it very advantageous.

(Testimony of Laura Franklin.)

He said, the best that we could expect nowadays was out of the earth, and that he thought that I would find it quite a good thing, this mine.

And just about that time he opened the door and showed me a large piece of something which he said was ore from the mine in a cupboard, and about that juncture all these gentlemen came out of the other room, and they were introduced as endorsing the mine. Each one said something nice about it, and they said they hoped I would go in with them: Those [217] gentlemen were Mr. Wikoff, Mr. Morgan, and—the engineer was introduced—and I think they said Mr. Gilbert.

As to this document dated October 8, 1934—I have seen that before. I think I received that at the office of the company, Consolidated Mines, in the Banks-Huntley Building.

(The document referred to was received in evidence and marked "Government's Exhibit No. 86.") (Objection was overruled.)

Mr. Norcop: "Oct. 8, 1934.

"Miss Laura Franklin,

"Victorville, Calif.

"My dear Miss Franklin:

"With reference to our agreement, it is understood that you are to have a \$6000.00 interest in the Frank S. Tyler agreement in exchange for the Malibu property, there being no cash

(Testimony of Laura Franklin.)

required to be paid by you now or any other time in the future.

“Yours very truly,

(Signed) “W. J. SHAW.

“WJS/B”

(By the Witness.)

In the discussion they spoke about the Frank S. Tyler agreement, and I said, “Well, why do you call it that.

He said, “That is just a name we give it because there is such a long description of the arrangement between the few men who are interested in this mine.”

I don't know if I signed that agreement. I don't know whether it was that or something else. I did not at that [218] time sign anything.

As to this letter dated January 28, 1935, on the stationery of the Consolidated Mines of California, I received that letter through the mails.

(The document referred to was received in evidence and marked “Government's Exhibit No. 87.”)

Mr. Norcop: This letter is on the stationery of the Consolidated Mines of California, Los Angeles, California:

(Testimony of Laura Franklin.)

“January 28, 1935.

“Miss Laura I. Franklin

“P O Box 254

“Victorville, Calif.

“Dear Miss Franklin:

“I have not heretofore replied to your favor of January 12th because I have been out of the city.

“I have discussed the matter with Mr. Tyler, and he does not feel financially able at this time to buy real estate.

“It is regretable that you decided not to come along with us on the proposition I made you for the reason that the development work at our mines has proven out to be a lot better than any of us had anticipated. The best proof of this fact is the smelter receipts which we are enclosing.

“This ore has, as you will notice, run over \$37.00 a ton, and we only shipped one car load for the purpose of getting the exact assays of what the ore would run. We do not expect to send any more to the smelter because it costs [219] too much—and our engineer now advises us to keep it for our plant and get into production.

“If you are in the city at any time soon, I would be pleased to have you visit me at my office.



(Testimony of Laura Franklin.)

“With kindest personal regards.

“Sincerely yours,

“W. J. SHAW (signed)

“WJS: CE”

(By the Witness)

In May of that year, 1935, I went to his office to find out why he had not carried out another contract with me. I had a discussion that pertains to my mining investment. Mr. Jacobson was in the room once in awhile. We (Mr. Shaw and I) again talked about our own transaction and he told me how nicely the mine had been doing, and finally he said, “Well, if I put my name on this—if I carry out this assignment of the other property and if I put my name on this Malibu land up, the house and lot, as well as Mr. Tyler has his name on it, will that be all right, and you will get as a dividend from the mining stocks which we will give you about \$75 income dividend, and Mr. Tyler likes the house so much that I am sure he will be glad to give you some of his stock.”

I said, “How do you value it?”

And he said, “Well, about a thousand shares would be five or six thousand dollars.”

He said, “\$75 a month for the mining stock would be [220] better than what you could get for your house, wouldn't it, by the monthly rent?”

And I said, “Why, yes.”

(Testimony of Laura Franklin.)

He said, "Could you get the deeds today to the house?"

And I said I would have to go quite a little way to get them, that they weren't there, and perhaps I had better stop and talk to the lawyer about it.

And he said, "Well, I am going away early in the morning and I would be very glad if you could bring them in the morning before I go."

And so I went without asking the lawyer and I brought my deeds over, thinking that perhaps that was the best thing to do, as it would establish his word about this other land that he had promised to take up the assignment, which the bank had been saying he hadn't taken, and that I would get this income after the mine was all shaped up, which he said it was doing rapidly, that the mill was being contracted for, although I don't know that it was there, but then I didn't know how much you had to have of a mill to mine because they had been sending it over to the smelter.

I returned the next day with the deed. I got my deed back and made it over to Mr. Tyler.

The next day when I came back, I saw Mr. Shaw, and he took the deed out in the other room and came back with Mr. Tyler's signature on it, and later on when we were parting, Mr. Tyler said that he was glad to have the land. [221]

This letter on the stationery of W. J. Shaw, dated May 28, 1935 is one of the documents to which I

(Testimony of Laura Franklin.)

have just referred that had Mr. Tyler's signature on it.

(The document referred to was received in evidence and marked "Government's Exhibit No. 88.")

(Objection was overruled)

Mr. Norcop: "May 28, 1935.)

"Miss Laura I. P. Franklin

"P. O. Box 254

"Victorville, California.

"Dear Miss Franklin:

"Acknowledgment is made of the Deed of Trust which is in exchange for certain interest in the Frank S. Tyler Agreement, under which is operated the McKisson, Grand Prize and Mineral Lode Mines.

"In further consideration of the Agreement it is mutually agreed and understood that the beach lot of which assignment of certain contract covering same has been made over to W. J. Shaw, shall be accepted and paid off to the satisfaction of the Bank of America Trust & Savings; and that there shall be no further responsibility or liability on your part in connection with the contract covering the beach property.

"Very truly yours,

"FRANK S. TYLER (Signed)."

(Testimony of Laura Franklin.)

(By the Witness)

This document dated July 15, 1935 bears my signature, and I signed it. I was in the office at the time that I made [222] over the—no, that must have been a little later.

(The document referred to was received in evidence and marked “Government’s Exhibit No. 89.”)

(Objection was overruled)

This letter dated November 1, 1935, I received through the mails.

(The document referred to was received in evidence and marked “Government’s Exhibit No. 90.”)

(Objection was overruled)

I received this other letter which apparently was not dated by typewriter, and is on the stationery of the Consolidated Mines of California. This came to me through the mails out at my residence at Victorville.

(The document referred to was received in evidence and marked “Government’s Exhibit No. 91.”)

Mr. Norcop: “Dear Miss Franklin:

“Acknowledgment is made of your favor of November 5; and in reply wish to say that we have made no extra copies of the Articles of Incorporation because you are the first partner

(Testimony of Laura Franklin.)

to make request for same. Perhaps it did not occur to you at the time you made the request, that the Articles cover 100 to 150 pages. The next time you are in the office he will be glad to explain them to you and answer any questions you have in mind.

“Perhaps you are referring to the liability and voting rights, etc. In respect to this, wish to inform you that [223] the stock is full voting, and non assessable under the law, as it is a California Corporation.”

“The property is located 14 miles East of Jackson, California—near Mokelumne Hill. I understand our superintendent is going to put up some signs which will make it easy to locate the property.

“We hope to have the mill in operation within the next ten days.

“Would suggest that you let us know in advance when you expect to go up there and we will give you a letter to our superintendent, who will be very happy to see you, and will show you through the property.

“Very truly yours,

“FRANK S. TYLER (Signed)

“FRANK S. TYLER.”

I did not go up to the property. [224]

## LAURA FRANKLIN

## Direct Examination (Cont'd)

(Articles and Amended Articles of Incorporation offered).

(The documents referred to were received in evidence and marked "Government's Exhibit No. 92.")

In the conversation and I had with Mr. Shaw on the occasion when I agreed to take a thousand shares of Consolidated Mines in exchange for my real estate, I imagine that he said his wife preferred the stocks to something else, preferred the mine to something else; and then I said I didn't know him very well and could he give me some evidence of his good faith, so he showed me some letters that he had from various business people; and as I was leaving and Mr. Tyler came in—as I was going out—he said, "You won't sell these shares, will you?" And I said, "Oh, no, I didn't intend to sell them. I will keep them."

I didn't receive the shares, so a long time after that I wrote to him while I was gone to ask what became of the shares. I received no answer.

As to what was said about how the persons would be participating in this mining venture—when he spoke to me, he said there was just a few men who had been friends for some time and wanted to develop this mine, that it looked so good, and that was in the fall, the previous fall, of '34 when the

(Testimony of Laura Franklin.)

directors were there at the time I mentioned. I was never a holder of stock in the Monolith Portland [225] Cement Company, or the Monolith Midwest Portland Cement Company.

In the fall of 1935, after I had returned, I was again at the offices in the Banks-Huntley Building, after August, somewhere along September or October. As time went along I made little notations to help me remember about certain things that I wanted to know about. I have October 29th, 1935, I seen Mr. Morgan. I went to the office in the Banks-Huntley Building, and was shown immediately into the inner sanctum, where Mr. Shaw usually was, but Mr. Morgan was sitting there. And he said, "Good morning," and wanted to know what I wanted, if I wanted to know about the lawsuit. And I said I didn't want to know about the lawsuit, but I wanted to know where my shares that I was supposed to get. And he said he thought they had all been distributed.

And I said, "Oh, I gave a house and a lot for some and I wondered where they were."

And he said, "I will see about it."

And I think he told Mr. Jacobson to make a note or something of the kind. I did not see Mr. Shaw or Mr. Tyler on that occasion.

I don't think I heard anything in '36. In '37 at least I don't remember whether there were letters exchanged, but in '37 I understood that the office

(Testimony of Laura Franklin.)

had been moved to Santa Monica, and I called and Mr. Shaw was there and I asked him how things were. I think it was in September. I don't [226] think there was anyone else there besides Mr. Shaw, except someone that I didn't know in the outer office.

I asked Mr. Shaw how the mine was and he said, "Well, last year it wasn't doing very well," but they were very encouraged now. And he said, "No one sold their shares."

And then in a few minutes he said, "Except that there are some to be distributed and someone has died, whose name I didn't know because I had never met any of the stockholders, never having had any stockholders meetings, and that these were to be sold, that most of them had been taken up, but if I would like a few more, why, he would be very glad to see that I could get them.

I said, "No," I didn't have any money, or didn't want any more.

There was no stockholders meeting called that I know of until the fall of 1939. November 8th, I think it was. (Examining book) This is my daily notation, diary. It says, "I went to an exciting stockholders meeting." It was at the Lankershim Hotel. The meeting had begun. It was called by someone whose name I didn't know, and it had progressed quite a little ways. They had called on an engineer to describe the mine, and Mr. Shaw came



(Testimony of Laura Franklin.)

in shortly after. They had progressed to the point where they said that maybe they would have to sell the mine, and just then the door flew open and Mr. Shaw came in and said that he would like to stop this meeting, and he had an injunction to stop the [227] meeting, that it was not a real stockholders meeting, that it had been called by postcard written by one person and signed with the name of another and that he did not want the mine sold and he would like to have the discussion go on from there. He looked around and he said, "These are not stockholders, they are mostly proxies," as I remember. Mr. Shaw looked at me. Just as the meeting was breaking up and they were all going out, I asked him if he was still a director, and he said, "Oh, yes."

I said, "Are there any others?"

And he said, "No."

I said, "Do you still have stock?"

He said, "Quite a lot."

#### Cross Examination

He said he was getting the injunction because the meeting had been called by someone who had no authority to call it. I don't remember who did call it, Mr. Shaw said that it was—I think it was his mother-in-law's name written by his wife, on a postal card.

I owned this property in Malibu in 1934. I bought it from The Ferguson Corporation. They were the

(Testimony of Laura Franklin.)

Ferguson people that had it for Mrs. Rindge at the time. I was about the only person who had a deed to the land. For the land, I paid about \$4,000. I deeded it to Mr. Tyler at Mr. Shaw's request. I did not owe money on it. I had paid off the mortgage that I had on the house and lot. There were two pieces of property involved in the transaction with Mr. Shaw. [228] And there is some confusion between them. The others were the beach lots. I had paid part of that and there was about \$3900 plus still due on it that Mr. Shaw said he would take up, but he did not. I gave a quitclaim deed to the bank about six, seven months ago, on this particular property. I had no deficiency judgment against me. I had assigned that beach property to Mr. Shaw and he was to take the assignment to the bank and, as I kept—that was one reason I went to his office so often, to find out what he was going to do with it. He told me that he would take it up if I would buy the mine shares, that he would continue to complete it. I do not know whether he paid anything at all on it. I wanted to get rid of the liability on my note. The beach lot was a private transaction in the first place between Mr. Shaw and myself. That is what makes this complicated, because the beach lot was originally a private transaction. I had agreed to buy these lots, then I found that I was going to a great deal of difficulty in selling my house, and in order to pay for these beach lots I

(Testimony of Laura Franklin.)

asked the real estate man at Malibu to see if he could find me someone who would take it off my hands, that I had already paid \$2,000, but I would let that go if someone would take up the assignment and pay the rest of it. So I was told that Mr. Shaw would take the lots and he would take the assignment papers down to the bank and pay cash for them. Therefore, I did not go to the bank with Mr. Shaw. [229]

Some time after I was sent a bill by the bank and I asked them if Mr. Shaw had not come in about them. So I went two or three times to the bank and asked if Mr. Shaw had come, and, Mr. Shaw was usually ill or had some other transaction which he was trying to swap off for the beach lots, something of that kind, and affairs went on and that was why I happened to go down to the office so often and finally became involved in the sale of the house to Mr. Tyler. In order to settle the whole question, Mr. Shaw promised to take the beach lots, relieve me of all past interest that was due, take the house and give me \$6,000 worth of shares in the mine. He did not arrange that I would give a quit claim. Shaw did not arrange any quit claim. I had a letter from the bank saying that the beach lots had come into their hands, and if I would give a quit claim deed that Mr. Shaw said he had never promised, that perhaps he had but he said he had not promised, and therefore if I would give a quit claim

(Testimony of Laura Franklin.)

deed on these beach lots they would call it quits. Mr. Shaw agreed to give me shares and take up the claim. I got shares. He agreed to take the beach lot off my hands. He agreed to get me clear on my liability on the beach lot. I gave a quit claim to the bank about a year or two afterwards, and that ended all liability as far as that was concerned.

My entry of May 28, 1935 is: "Went to see Mr. Shaw, agree about trade and go to San Bernardino. The next day [230] I went back to Los Angeles after going to the bank. Met Mr. Shaw and Mr. Tyler, sell my house for the mine shares." I got my certificate in the fall of '35. (Examining envelope) That is the one the stock came in.

As to this letter of May 28, 1935—"Acknowledgment is made of the deed of trust which is in exchange for certain interest." That is the sale of the house and lot. I suppose the deed that I gave to Mr. Tyler to the land. (Examining document) The real estate man said that Mr. Shaw had gone to his office and signed the assignment to the beach lot and was going to take it to the bank, and I said, "Well, where is my copy?"

And he said, "This is all I have," and this is what he gave me. (Examining document) I afterwards saw the assignment in Mr. Shaw's office. And this was—he told me that if I accepted the amount Mr. Shaw said he would pay for the beach lot, that I would sign this acceptance, and that he had a

(Testimony of Laura Franklin.)

check. So he made out his own check for me for part of that.

The Clerk: The letter of May 16, 1934, to Arthur A. Jones, signed W. J. Shaw, in the nature of a direction, is Defendant's D, and the receipt of May 7, 1934, will be E.

(The documents referred to were received in evidence and marked "Defendant's Exhibit D" and "Defendant's Exhibit E.") [231]

Redirect Examination

I received this letter.

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EVA M. GOODRICH

a witness for the Government, was recalled and testified as follows:

Direct Examination

I owned some stock in the Midwest. I had 18 shares, and I received 36 of the Mines. After I made that exchange, that was when I received the certificate through the mail representing the 36 shares of Consolidated Mines.

## HOMER J. ARNOLD

a witness for the Government, testified as follows:

## Direct Examination

As to this photostatic copy of a certificate of Consolidated Mines of California, numbered 732, for 250 shares of the stock of that corporation, dated the 14th day of December 1936, made out in the name of Homer J. Arnold and Florence R. Arnold, joint tenants with full rights of survivorship, and signed apparently Frank S. Tyler, secretary, and H. L. Wikoff, president—I received the original certificate of which that is a photostatic copy. Prior to receiving it, I was an owner of shares of the Monolith Midwest. In fact, I did have them in both. My stock in the Midwest was sold for \$420 and the cash given to me. I had that transaction with Mr. Shaw. That was prior to the date that this certificate of mining stock bears. After that, I decided to put that money into the mine, the Consolidated [232] Mining Company. Most of my talking was done with Mr. Shaw. I put \$420 in cash into the Consolidated Mines of California, and then I suggested that if he would, I would like to make it a little more—Shaw was under my care for quite a period of time—say make \$80 of it that he would take out in treatments, for a total of \$500. Represented by the 250 shares, making it \$2.00 a share. Then I received, when the deal was finally consummated, through the mails, this stock certificate No. 732 of which this is a photostatic copy. I have that certificate.